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RESTRICTIVE TRADE PRACTICES COMMISSION

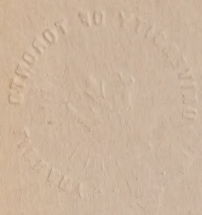
LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 23-25

OTTAWA

SEP 16 1954



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RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF
an inquiry
Regarding Loss-Leader Selling.

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RESTRICTIVE TRADE PRACTICES COMMISSION.

IN THE MATTER OF

an inquiry

Regarding Loss-Leader Selling.

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Hearing held (in public) in the Supreme Court
Building, Ottawa, Thursday, September 16th, 1954.

--O--

PRESENT:

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.,	Chairman.
Guy Favreau, Q.C., B.A., LL.B.,	Member.
A.S. Whiteley, B.A., M.A.,	Member.

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APPEARANCES:

Mr. N.W. Wickwire, Q.C.,	} Counsel to the Commission
Mr. Paul Gerin-Lajoie	
Mr. R. M. Davidson,	Secretary to the Commission
Mr. L. A. Skeoch	Senior Economic Adviser to the Director of Investigation and Research.

--O--

REPRESENTATIONS:

Better Business Bureau
Represented by:
George S. Piers, Manager (Ottawa and Hull).

--O--

THE CHAIRMAN: Mr. Wickwire, is the Better Business Bureau first this morning?

MR. WICKWIRE: I believe they are scheduled first, Mr. Chairman, yes.

THE CHAIRMAN: Then, is the Better Business Bureau prepared to proceed now?

MR. PIERS: Yes.

THE CHAIRMAN: Then, would you come forward, please. I understand the Bureau has no brief, but will answer questions; is that right?

MR. PIERE: I have no brief, no. There was a group of questions submitted to me, and I said I would try to answer them.

THE CHAIRMAN: Then, will you proceed, Mr. Wickwire?

MR. WICKWIRE: Yes. Would you please give us your full name.

MR. PIERS: I am George S. Piers.

MR. WICKWIRE: And you represent the Better Business Bureau, Mr. Piers?

MR. PIERS: Mr. Chairman, I should like to inform the Commission, if you please, that I am acting on behalf of the Ottawa Bureau. I happen to be Secretary of the Association of Better Business Bureaux, but I do not wish to have anything I say related to that. Because some of our Bureau managers are not in agreement with what is going on, somewhat. But as the local Bureau manager, I thought that we should

try to do what you folks would like, to answer your questions.

THE CHAIRMAN: You represent the Ottawa Bureau?

MR. PIERS: Yes and, unofficially, the others.

MR. WICKWIRE: Would you just tell us something about the nature and the extent of the Canadian Association of Better Business Bureaux? How extensive is it?

MR. PIERS: Perhaps it might be just as well if I were to read the purposes of the formula under which we were granted our constitution by the Dominion Government.

MR. WICKWIRE: Yes, that would be fine.

MR. PIERS: It is as follows:

To encourage the formation of, to assist in the development of, to render service to better business bureaux engaged in fostering truth in advertising, and opposing fraud and deception and/or unethical practices in the advertising, offering and selling of merchandise, security, services, employment, or anything of value to the public;

To study and recommend the effective methods of operation of such organizations; to prevent in any lawful manner the wrongful or deceptive use of the name or words "Better Business Bureau";

to provide conference facilities-- and so on. That is the Association of Canadian Bureaux, and each Bureau is covered with the same formula, related down to its own operations. Each Bureau, wherever it operates,-- and there are seven of them in Canada--is autonomous in its own locality. We receive no other support from any other Bureau or organization.

Generally speaking, what I have read to you is the form of operation of each Better Business Bureau in each centre. We are concerned locally in just what I was saying and, necessarily, in the formation of other bureaux.

THE CHAIRMAN: Is it financed by contributions from the local---

MR. PIERS: The Better Business Bureaux?

THE CHAIRMAN: Yes.

MR. PIERS: Yes, it is. If I may add, we happen to be, in addition--the Canadian Association is known as District No. 7 of the Association of Better Business Bureaux, which is the international Association. We receive a certain return of our fees to that organization to maintain and operate our own. Each Bureau, under the constitution, pays a certain small fee, which as yet has not been rendered to our Association because we get sufficient the other way.

In the case of the local Bureau, it

is maintained by membership fees from business firms in the city where it operates. We do not carry, as a general rule, private memberships. The Ottawa Bureau has none. I think the Toronto Bureau may have a couple in the form of doctors. The rest of us, to my knowledge, have no private memberships.

THE CHAIRMAN: That is, they are either corporate memberships or business partnership memberships?

MR. PIERS: We just take them in as straight members, just as a business firm.

THE CHAIRMAN: The name of the firm, whether it is a corporation or a partnership?

MR. PIERS: Yes, exactly.

THE CHAIRMAN: And you said that there are seven; in what centres are those seven bureaux?

MR. PIERS: Starting in the east, the Maritimes are covered, with the office at Halifax; and then there are Quebec, Montreal, Ottawa, Toronto, Winnipeg and Vancouver.

THE CHAIRMAN: Nothing in Alberta or Saskatchewan?

MR. PIERS: It is interesting to note that we hope to have a Bureau very shortly in Calgary; that is in process of formation at the moment.

MR. WICKWIRE: Are there any organizations known as Better Business Bureaux in any

of the other centres of Canada, which perhaps are not affiliated with your national body?

MR. PIERS: No, there are none that we know of. I might add, for the benefit of the Commission, that the bureaux work very closely in cooperation with all Chambers of Commerce and Boards of Trade and, of course, the enforcement officers in all cities and provinces, including our own R.C.M.P.

MR. FAVREAU: Excepting the Halifax ^{has} office, which/jurisdiction over the whole of the Maritimes---

MR. PIERS: Yes.

MR. FAVREAU: ---what is the jurisdiction of the other bureaux--municipal or provincial?

MR. PIERS: It would be partly provincial in the case of Ontario. My territory is from Pembroke to Kingston and to the Quebec border. The Toronto territory is west of that; and then each other Bureau is in its own province.

MR. WICKWIRE: Would the Winnipeg office have had, in the past, any jurisdiction over or any activity in Alberta and Saskatchewan; or is it purely Manitoba?

MR. PIERS: No, purely Manitoba.

MR. WICKWIRE: So at the present time Saskatchewan and Alberta would be without representation?

MR. PIERS: That is true. They are

included in the territory of Manitoba and British Columbia, but we do not send anybody in there to operate at all.

This may be of interest to the Commission, that all bureaux receive communications from all centres of Canada, and whichever Bureau is nearest to that, where the communication came from, it is up to them to try to do what they can by mail, if it is something of the nature with which we have to deal.

MR. WICKWIRE: Now, Mr. Piers, during the hearings before this Commission it has been said on more than one occasion that one of the major complaints of the retail appliances dealers and distributors, particularly, relate not so much to the extent of price cutting as to the use of misleading advertising. This advertising is said to include such practices as advertising nailed down appliances. By that it has been suggested that the dealer would advertise one or two late models of, let us say, a television set, at a very deep-cut price, and that when customers came to his shop to purchase those articles they would have "Sold" tags on them; and perhaps in some instances they would have the names of fictitious persons or the names of persons with fictitious addresses; and the customer, having come to the store, the shopkeeper or his salesman would then try to sell him another article. That is one type.

Another type of practice complained about is the advertising of appliances which the dealer does not have in stock at all.

Another type would be fraudulently advertising obsolete models as current models.

Another practice complained about is the use of pictures of more expensive models in advertising lay-outs, and the advertising of a price purportedly applying to this model, but in fact applying to a cheaper model.

Other practices alleged were said to be bait advertising, based in some cases upon defective or reconditioned merchandise, and misleading information as to the coverage of the guarantees on parts and services; excessive charges on time payments; extra charges for delivery and installation, and similar matters.

MR. PIERS: Yes.

MR. WICKWIRE: Now, having put all that before you, can you describe, in any detail, any specific practices which the Better Business Bureau have had occasion to investigate?

MR. PIERS: You have asked several questions. Which one would you like me to deal with first? Shall I take the first one?

MR. WICKWIRE: Yes, all right; take nailed down appliances.

MR. PIERS: That is the case of articles that are sold when the parties go into the store, and they are told that they are sold,

or that they have been sold.

MR. WICKWIRE: Well, there is one specific complaint made before this Commission by a dealer that a competitor had advertised models of a certain model of General Electric Appliance, and that when the customer came to the store to buy it at the price advertised, the two models had "Sold" tags on them. There were no other models in stock, except those two.

MR. PIERS: All right. Mr. Chairman, may I answer the question asked in as broad a form as I wish?

It is perfectly true that there are firms throughout the length and breadth of Canada who do just exactly that. We have them here in the city of Ottawa.

As a matter of fact, only two days ago a lady phoned to our office. She went to a place-- it was not in connection with TV; these were garments on sale. She appeared at the door, and when the door opened she went in, and was actually the first customer. But the goods were all sold.

Now, the store qualifies that to us when we asked them as to why they did this. They say, "Well, some of our clerks have sold those to their friends." I said to them, "Why did you advertise, then?" "Well, we did not know that this was the case." I said, "Have you no control over the operation of your clerks, for you are definitely misleading the general public, and

you are getting a group of men or women at the front door of your store, and they cannot buy the goods when they get there."

Another item, along similar lines, would be in the case of--well, I am thinking of men's coats. This happened some few years ago, and I have no doubt it will happen again, in certain types of stores.

The Montagnac is a very, very famous coat, and an advertiser will sometimes advertise a large group of Montagnac coats. He will not say the number. We try to get them to show how many they have. You, or I, or anybody else can go to the store and we will find only one coat. But there will be a lot of other coats that may not be in the class of the Montagnac.

Frequently the salesman in his effort to make a sale, and without, let us say, the knowledge of the manager, will say to the customer, "Well, this coat is just as good as a Montagnac. We all know that."

This does go on. And there are certain types of stores which do this frequently. We have them here in Ottawa, and we have them throughout the country. We hear about it when we meet together--we bureau chaps--and we know about it.

Immediately we go after a store of that kind and we say, "Why did you do that?" Well, they have always got a story, just as I

have related. Does that partially answer your question?

MR. WICKWIRE: Yes, I think it does. Now, what steps, if any, does your Bureau take to offset or to stop that sort of practice?

MR. PIERS: Well, we try to go to the management. We do not like to use the big stick. In fact, the whole operation of the Better Business Bureau is to try to maintain the very finest of ethical operations or standards between customers and firms. And we know, in this room, firms that can pass that category without much trouble. But there are others which do not.

So we go to the firm and explain to them, "We have had a complaint against your firm, and this is the form of that complaint." We read them the complaint. We suggest to them that they do something about it. We even offer to help them. And when the complaint is settled--if it is settled, and frequently it is--there are some stores which will not settle; they are not interested in it. We try to show them the error of their operations and get them to run along lines of proper ethical business standards. And we supply them with whatever help we can.

If on the other hand, sir, well--we do not use any antagonistic sticks, if you might call them that, or sledge hammers; we do not like

to do those things. But we do have a source of unfolding the story of what has happened, in our bulletin, which we publish from time to time for the information of our members. Unless it is a serious case, we will not necessarily mention the name of the firm that has perpetrated the act. We will just refer to it in general terms, and say what has been done to overcome it.

MR. WICKWIRE: So that, any corrective measures being applied by the Better Business Bureau to date have been of a persuasive nature, to try to make them see the error of their ways, and particularly to correct them?

MR. PIERS: Yes.

MR. WICKWIRE: Any other types of complaint or bad business practice that have come to your knowledge, or the knowledge of your Bureau?

MR. PIERS: You have referred to bait advertising. I brought with me two or three sheets of some of the recent issues from our local papers, on some four firms. I would like to suggest to the press, if I may, that they withhold these references to any particular firms in the city of Ottawa.

THE CHAIRMAN: It may not be necessary for you to name them.

MR. PIERS: All right, I shall not

name them.

THE CHAIRMAN: We would like to have the advertisements before us, but I do not think you need publicly to state the names.

MR. PIERS: All right. I am afraid I was going to do that. I am glad you kept me clear of it.

The method that is used in this bait advertising operation started some seven years ago, and I happened to be in the city of Winnipeg at the time. This particular operation was advertising a vacuum cleaner. The method that they were using in the copy, in the advertising, was definitely misleading and misrepresentative. I was fortunate enough--and I am speaking personally--I was fortunate enough to get the newspapers ^{to} withhold any further advertising because of its nature.

The then general manager, who is today the president, of the firm, visited Winnipeg with a mass of copy, and asked us if we would O.K. the copy for his future ads. We refused. We said, "We are not in the business of selling vacuum cleaners, and you will have to submit the copy. We will then pass it and look at it, and so on."

Since then there have been a lot of these organizations spring up. And I again speak personally, Mr. Chairman. It is my belief that the result of that started operation of

seven years ago has trained a lot of men to go into this business of bait advertising. This is a method that is used on sewing machines and vacuum cleaners and floor polishers, and other items known to us as home appliances. They advertise similar to this advertisement here, items at \$10.50, \$19.50, \$10.50 again, and so on and so on.

MR. WICKWIRE: Perhaps we had better have them marked as exhibits.

THE CHAIRMAN: Yes, we will mark them.

EXHIBIT NO. OF-10: Sheet,
Ottawa Citizen,
August 25, 1954.

EXHIBIT NO. OF-11: Sheet, Ottawa
Citizen, August 24, 1954.

MR. WICKWIRE: Exhibit OF-10 is a sheet from the Ottawa Citizen of August 25, 1954. You have submitted that to illustrate what?

MR. PIERS: Bait advertising. I was explaining the method that is used by salesmen of these companies. At the present time there is in the case of one firm, of which you have a sample there--I think it is probably OF-11--in which they have a radio broadcast, and the persons listening to it are supposed to call the firm and answer a question. And the question, incidentally, is the most ridiculous you ever heard. However, they answer it, and in that manner they get the name of the party,

and a prospect.

Then, a man goes to the home with one of these cheap machines, and he demonstrates the machine. After the presentation is over the customer may say, "Well, I will purchase that". More often than not, the salesman will say, "I am sorry, we have not got that immediately, and I will have to bring it to you at a later date." But before he does finally do this he says: "Now, you have heard this machine. You see what it will do. But I want you to see our other machine." And he promptly goes to his car and brings in a higher priced article, and demonstrates it. That is referring to the item on Exhibit No. OF-11. That is this one. You have a similar copy of it there.

MR. WICKWIRE: OF-11, I believe.

MR. PIERS: In the case of OF-10, Exhibit OF-10, the cleaner is a rebuilt one, I think. Does it say that it is rebuilt?

THE CHAIRMAN: Yes, it says, "Beautifully rebuilt." The other one says that, too. They both say, "Beautifully rebuilt".

MR. PIERS: That method is that they will go in with this rebuilt machine. Usually it makes such a horrible noise and it has so little effect in its work on the floors--and perhaps I should not interject this--but the fellow says, "Now, you would not want to have that around here, Mrs. Jones, would you?"

Why, you could not hear the telephone ring." So he hops up and brings in the higher priced article, and attempts to sell it to her.

But supposing Mrs. Jones says, "No, I want this article." So he accepts from Mrs. Jones a cheque, or a down payment. And when he goes out the door he will hand it back to her; so that legally he has returned the goods, and the transaction is completed. She will seldom get the machine she has asked for.

The Better Business Bureau has had, since I have returned to Ottawa--and it happened in Winnipeg when I was in the Winnipeg Bureau--we have had several instances where women have definitely asked for the cheap machine; and we have gone after the firms concerned and asked them to supply the machines. We have been told that they did not have any, that they were expecting them in.

Mr. Chairman--and this is a sort of a by-play--they are still coming in. They have yet to be delivered. But they will return the money; they will go out and return it, in a hurry.

One of the managers of a local firm jumped on me about it, and I told him quite frankly what we thought of him. And the result is that he is now paying attention to what he is doing.

MR. WICKWIRE: How general is that practice?

MR. PIERS: It is quite general, Mr. Chairman. I think it may be a little more prevalent in the city of Ottawa at the moment than in some of the other cities. But in the cities where there are no bureaux, I cannot answer your question--I do not know what may be happening there. There are four such firms operating in the city of Ottawa at this moment.

MR. WICKWIRE: Can you tell us anything about any of the cities where you have bureaux--if that sort of thing is going on?

MR. PIERS: Well, I understand from Toronto that they had some 12 types of operations known as bait advertising; and I have been informed by the Toronto manager that nine of them have gone out of business, because of the people, I suppose, becoming wise, and perhaps checking with the Better Business Bureau first, and using our famous slogan which, if I may, I shall interject here--"Before you invest, investigate."

THE CHAIRMAN: Is it your opinion, then, that this sort of procedure tends, to some extent, to defeat itself in time?

MR. PIERS: Well, in the case of one firm it has not done that. But we have taken the stand, all of us, that the entire lifeblood of that type of operation is advertising. We

know that they cannot get near a customer, except by advertising. And we have talked to the newspapers--I, myself, personally--have talked to the newspapers, and we have talked to the radio stations. And they all say the same thing--"Well, they pay us good money for this,"--and we know that they do. They have to have advertising in order to exist, because otherwise they could not get customers. They will not go into the stores--or our experience has been that only a very small number of them will.

THE CHAIRMAN: I was thinking it would not be very long before they would make quite a number of enemies.

MR. PIERS: They do.

THE CHAIRMAN: Among their purchasers.

MR. PIERS: They do.

THE CHAIRMAN: And in the course of time, the more business they did the more enemies they would have, and the more rapidly they would be out of business.

MR. PIERS: Well, Mr. Chairman, may I just make one remark; you will remember what P. T. Barnum said.

THE CHAIRMAN: Yes; but I do not think that a business ever flourished very long on that motto.

MR. PIERS: I would like to go along with you, there; but, you know, there are a lot of marriages taking place, and these young folk



have not very much money. They have got to have cleaners and sewing machines in their homes. And they buy one of these things--or they think they are buying it--and they get stuck with something else.

The unfortunate part of it is that these young folk, when they do this--well, there is always a contract that they have to sign. We warn them, "Remember, when you sign a contract, unless there is something in writing that states that the company will make changes or alterations, you have had it. That is all." And there is very little we can do on that score.

MR. WICKWIRE: In what way can you warn a person beforehand?

MR. PIERS: If we hear of this we will do it in pretty quick order. We put out booklets along this line--and I will hand some of these up to the Commissioners.

THE CHAIRMAN: Perhaps these could be grouped as one exhibit. Do you wish to have them filed as an exhibit?

MR. WICKWIRE: Yes, the group of them.

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EXHIBIT NO. OF-12: Three booklets entitled, respectively, "Your Home, a Paradise for Gyps"; "Bait Ads that hook your Dollars"; "Things you should know about the purchase and servicing of Television Sets".

MR. WICKWIRE: How wide is the circulation of those pamphlets?

MR. PIERS: At the moment they are only to our members. We have 300 members in Ottawa. I would like to say this, that the service of the Better Business Bureau, through that practice, goes straight into every employee, into their homes. We give to a firm, when they become a member, a sufficient number of copies of the little pamphlet we have, telling them of what the Bureau will do for them, and we give them sufficient of those copies to give to their employees in their pay cheques or pay envelopes so that they may take them home. And we say that we would be very glad to hear from them at any time.

MR. WICKWIRE: Now, how effective do you think this practice is in stopping the matters complained of?

MR. PIERS: Would you complete your question, please?

MR. WICKWIRE: How effective do you think the practice is in circulating these pamphlets in stopping the matters complained of?

MR. PIERS: The only way I can answer that question is that we keep a record of the calls we are receiving from employees of member firms, and we are receiving more/^{now}than we did in the past. They are calling us on many subjects. We keep a record of every call, and whom it is

from, and its subject matter, and where they work--whether it is for the Government or what we term the general public or a member firm.

I brought my reports for the last three months, just to give an outline of some of the various subjects that we have. But I think this is detail which it would not be necessary to place before this Commission.

I can tell you that the largest subjects that concern us are home appliances with regard to bait advertising and food--that is, food dispensing and methods of freezing, and so on, and also home furnishings and, in a large relationship, real estate, due to the operations in this area of a firm selling cemetery lots.

And then there are some other lines. We have quite a large list of categories we put the calls into. But those are the main ones we get the largest number of calls on. Some of them are complaints, and some of them are inquiries. I would presume that the complaints would be about 15 per cent. Perhaps that figure is a shade high, but that would be an outside figure.

THE CHAIRMAN: The complaints are about 15 per cent of the calls made?

MR. PIERS: Yes. We had in the month of August a total of 477 telephone calls, letters and interviews, and we divide those up.

THE CHAIRMAN: Is that the month of August?

MR. PIERS: Yes, the month of August. The other bureaux will have a larger percentage because of their size and staff. Home appliances were 97, food was 67, and home improvement was 23; apparel--that is clothing--both men's and ladies', 22; and then it goes all the way down. It might be interesting to the Commission to have what happened in the whole organization, the international group, for 1953. In that year all bureaux on both sides of the boundary line handled 1,895,500 calls concerning various subjects. And there again, home appliances were first. Construction--that is, home construction--was second.

MR. WICKWIRE: Complaints about home construction?

MR. PIERS: Yes. The complaints were 50 per cent of the inquiries.

THE CHAIRMAN: 50 per cent?

MR. PIERS: Yes, that is the whole organization.

THE CHAIRMAN: Your record is only about 15 per cent.

MR. PIERS: Yes, but I am speaking about one category. Counsel has just asked me about construction, home construction. Complaints in that were 50 per cent of the inquiries. The complaints on the whole thing

were away, away down--the whole organization.

Then, the third largest group was television. The United States has had television much longer than we have, but it will increase with us now. Then, the fourth category was furniture, the fifth was magazines, and so on. That is the whole organization, sir.

I would like to submit, if I may, for the benefit of the members of the Commission, this information in the form of a questionnaire sent out by the Vancouver Better Business Bureau in reply to questions submitted.

THE CHAIRMAN: We will mark that questionnaire as an exhibit.

EXHIBIT NO. OF-13: Questionnaire
by the Vancouver Better
Bureau, and replies thereto.

MR. WICKWIRE: This questionnaire was submitted, you say, by the Better Business Bureau of Vancouver--to whom?

MR. PIERS: He submitted some to private homes and businesses and professional people. I think he sent out--well, I have forgotten just how many he sent out. I just thought you might like to know it. But he does not say how many he sent. However, I think there were some two or three hundred. But I would not like to state exactly.

MR. WICKWIRE: Was it just sent to a cross-section of people?

MR. PIERS: It was a cross-section, yes.

MR. WICKWIRE: Of citizens in Vancouver?

MR. PIERS: Yes, that is right. They were picked out at random. They were unknown to the Bureau, except to some of the members who received it.

MR. WICKWIRE: Does your Bureau take any other steps, Mr. Piers, in correcting these practices about which you have received complaints?

MR. PIERS: Yes. If a complaint is of a nature which requires the civil or the criminal courts to take part in it, we will assist those two groups, and we will send the parties concerned, or either of them, depending upon what it is--we will assist them in every way to overcome the situation.

May I take a moment just to relate an instance which happened just on Monday of this week. We received four telephone calls in very quick order from an area outside the city, in the west end. The parties were two young men calling on these homes and selling or attempting to sell a book purporting to be on the subject of education. In all of the four cases we got, three of them reported that these men said they were from the Separate School Board, and in the other

instance the parties said that they were representing the Department of Education of Ontario.

Knowing that it is usual when such a thing happens--and neither of those two bodies sell booklets in that form; we would know about it before they started, if they did, because the Department always cooperates with us--I tried to reach a house--I got on the location and I tried to reach a house ahead, and to get the chaps and see what it was they were doing, and ask them to come in and tell us their story. I was unable to do so.

So I had to turn to the only other place, and I asked the provincial boys if they would pick them up. And they brought them in. There was no charge laid.

MR. WICKWIRE: You mean the Provincial Police?

MR. PIERS: Yes. And they brought these two lads in. One fellow was quite disturbed over this act. I said, "You have made four calls today, and the people have got the idea that you are representing the Separate School Board and, in the other case, the Department of Education. What do you represent? We would like to know that, because obviously you are doing something that apparently is misleading somebody somewhere? What is this all about?" So he attempted to tell me. He said, "My general manager is in town." I said,

"Where are you from?" He said, "I am from Toronto." I said, "If your general manager is in town, it might be a good idea if I had a talk with him."

So we let the matter go. They went, and next day the general manager came in. He told us the story. I said, "This is the story we get. Why are your men using this procedure?" He said, "They do not use it." I said, "Will you give me the story of what they use?" So I am quite satisfied that any gentleman in this room would certainly think that, after hearing the presentation, and certainly the beginning of the presentation--he would assume that they represented somebody, either the School Board or the Department of Education, because the subject they spoke about and talked about was education, in the very first line.

I questioned them seriously and closely about it. And I suggested to the general manager that they change their methods. He did agree with me. He said, "I can see quite easily how it could happen." So they went back to Toronto--they left that night--and they told me that they cancelled their business that they had taken that day. I have no way of proving that, because we don't know whom they sold to. And they sent me a copy of their plan, their written plan, of what their salesman was to use. I did not bring it

with me, because I did not think I would need to use it.

MR. WICKWIRE: Which would only be a guide, I suppose?

MR. PIERS: Yes, that is all, because when a man is selling you cannot walk around with him all the time and see what he is going to do. But the impression certainly was left--and I got that impression, and I am satisfied you would have got it, although there was no actual name used--but they have changed their methods, at the suggestion of the Better Business Bureau.

MR. WICKWIRE: And that, I take it, Mr. Piers, is the type of thing that your Bureau would track down and investigate and make suggestions to correct, all over the country?

MR. PIERS: That is right. It might be interesting to the Commission to know that while we are at this time in this room there has started within the last two days another operation which we have asked the president and the secretary to check on--and this is going to affect every one of us; and until the Bureau is satisfied that what they are doing is right--and the ladies who spoke to me about it, they are sending us in a written statement. We have asked these ladies to send it to us. I am satisfied that

the president and the secretary of the organization will change their procedure. But at this moment it is not good. I just say that to show you that we have it going on right now.

MR. WICKWIRE: Is there anything else that your Bureau does to check these practices?

MR. PIERS: Well, that is a pretty broad question.

MR. WICKWIRE: Have you ever had occasion in your Bureau to inaugurate prosecutions under section 406 of the Criminal Code, relating to advertising?

MR. PIERS: No, not to my knowledge. The bureaux have never gone to the criminal courts for anything of that nature. We would rather not. If it comes to a case of the courts, we suggest that we will supply as much information as we can to the complainant, so that he can be guided in what he does, and take it to the proper authorities.

We will appear--I have appeared in one or two instances on behalf of complainants in order to relate the circumstances and the stories that were told to me at the time I first met them, and so on.

MR. WICKWIRE: That is, appearances in the criminal courts?

MR. PIERS: Anywhere; we will go anywhere to assist.

MR. WICKWIRE: But you have appeared

in the criminal courts on behalf of complainants.

MR. PIERS: Yes, I have.

MR. WICKWIRE: And in those cases would the charges have been those of obtaining funds or moneys by false pretenses, or something of that nature?

MR. PIERS: This particular instance-- it was not in this city. It was because of a statement made by a man selling another line of a product. Well, let us put it this way, that there were two competing lines of products, and this man made the statement about the other product to the effect that if the purchaser had purchased the other product, he would have a very serious malady take place in his life, and that eventually he would die, that death would overtake him.

MR. FAVREAU: And that part, the latter part of his statement, was quite true, was it not--that eventually death would take place?

MR. PIERS: Yes, perhaps so. Anyway, this particular lad did quite a lot of this. We warned him about it. But he kept at it, and eventually several people took action against him and the company itself, and we appeared to answer questions as to how the stories came to us. That was in the criminal court.

MR. WICKWIRE: Now, then, does the

effectiveness of any action taken by your Bureau tend to be greater in some areas than in others? I mean by that is it greater in the small centres, as compared with the metropolitan areas?

MR. PIERS: I am glad you brought that point out. I will have to give you another instance, if I may--because these are things which illustrate the work we do. In the month of June a man well known to us, and well known to the authorities, attempted to sell furnace installations to a lot of people in the city.

MR. WICKWIRE: The city of Ottawa?

MR. PIERS: Yes, the city of Ottawa. he collected down payments amounting in the 15 instances we know about, of from \$25 to \$200. And he did that in pretty swift order. He was a nice appearing chap. When we got the information we did not stop to fool about it. We said, "You go straight down to the police"--because we knew the man had a record. But, unfortunately, the fellow skipped town.

Now, he went into a smaller area where there is no Better Business Bureau. So what we did, to assist the areas, was that we sent a letter to the towns in the Valley, and asked the cooperation of the Boards of Trade and the Chambers of Commerce in those towns to check on this man. He had an accomplice. And we said that if he was residing in any of

the hotels, that they should wire us promptly-- because, by that time our local Ottawa police had a warrant for his arrest.

We nearly caught him--but I do not think he has been caught yet. Then, when he slipped through the Valley, we asked the cooperation of the Ontario Hotel Association. They shot out a directive to get him. But this is the point I want to make, that when the Better Business Bureau catches up with a man, he knows that he can go into the smaller towns, where there are no bureaux, and where there is only a very small chance of the people in that town knowing too much about his operations.

MR. WICKWIRE: In other words, your remedial measures are more effective in the centres where you have bureaux than they are in the smaller centres.

MR. PIERS: Yes, that is right.

MR. WICKWIRE: But do you have members of your organization from the smaller centres?

MR. PIERS: Not too many, sir.

MR. WICKWIRE: Not too many?

MR. PIERS: No. They would be in the form of Chambers of Commerce or Boards of Trade.

MR. WICKWIRE: Now, that brings up my next question. What assistance do you receive from other bodies in maintaining the principles of the Better Business Bureau?

MR. PIERS: That is a pretty broad

question. May I say that we have full cooperation-- let me put it that way.

MR. WICKWIRE: Some such bodies as Chambers of Commerce and Boards of Trade?

MR. PIERS: Yes, and the enforcement officers.

MR. WICKWIRE: Is that pretty much Canada-wide?

MR. PIERS: Yes, it is. We enjoy the very best of relationships with them all. I think it should be known to your Commission that we are quite jealous and proud of the fact that the bureaux do a job that there is no other organization in Canada that we know of, or in the United States, does anything like.

If I may use a vulgar term, we have no axe to grind. We will assist anybody. We do not ask what their creed is, or anything like that, at all. If they feel that they have been dealt with unfairly, and we think that they have been unfairly dealt with, when we hear the story they have to tell us, we will try to take over their battle for them.

MR. WICKWIRE: Have you noticed any trend toward any improvement in the level of ethics in advertising?

MR. PIERS: Yes, there has been. One particular line of endeavour is the sale and distribution of magazines. That lends itself quite easily to racketeering and unfair practices.

That has been greatly reduced, due to the establishment of what is known as the Canadian Central Registry.

MR. WICKWIRE: Would you describe that Canadian Central Registry? What is its purpose?

MR. PIERS: I think that the principal purpose is this, that it includes the publishers and the agencies who sell magazines from door to door, or otherwise, in an organization, their purpose being to control the men who sell the magazines, and to take effective measures against those men if they step off the beaten path.

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When a man becomes associated in selling magazines for an agency, he is supplied with a card on which appears his photograph. Many of you no doubt have seen them. I understand that is renewed every month. If, through the representative of the Better Business Bureau, or any other agency, Central Registry is notified of his actions, he is given an opportunity to clear himself; and if they are satisfied he has not done so, then his name is circularized with all the agencies and all the publishers, and he is just about through in that line of business. The complaints received by all bureaux in Canada and the United States--because they have a tremendous one down there--are away down to what we used to have a few years ago. I would not say they are entirely eliminated, but they are away down.

MR. WICKWIRE: As your bureau and your affiliated bodies have succeeded in stamping out certain of these bad practices, do new ones tend to develop, or new techniques of misleading advertising? What has been your experience?

MR. PIERS: Well, they do, that is true. There is always some chap who comes along with some new idea, and he will try it. And when we hear about it we have to ferret it out, and find out what is at the bottom of it.

MR. WICKWIRE: He will at least try it once, anyway.

MR. PIERS: Yes, they do.

MR. WICKWIRE: How far can consumers obtain protection against misleading advertising from educational work and advice on the part of an organization such as yours, and how far from organizations set up by sellers to promote higher moral codes? Do you think both should work in unison?

MR. PIERS: I would be inclined to say yes, that they should. But perhaps I do not understand your question quite clearly.

MR. WICKWIRE: Well, with organizations such as Better Business Bureaux and the work which you do in combination with the sellers of goods--that is, the legitimate people--working together, do you think that that is quite

effective in stamping out these practices?

MR. PIERS: Yes.

MR. WICKWIRE: Now, Mr. Piers, one authority on advertising, Neil H. Borden, has written on the Economics of Advertising, and has suggested that, in connection with encouraging honesty in advertising---

The law almost perforce must limit itself in efforts designed to prevent the grosser departures from probity. To attempt to make sellers speak without bias would present a hopeless case in enforcement. The sale of dangerous or immoral products can be banned. Sellers' recommendations for the use of drugs or other products, in harmful quantities, fortunately can be ostracized by the law. Fraud and gross misrepresentation can be legislated against with some success.

And that is the end of the quotation. My question is, how far would Better Business Bureaux be inclined to agree with this view and, more generally, what does it consider to be the role of legislation in enforcing honesty in advertising?

MR. PIERS: Well, do I understand that you are asking me to make a statement on what this Commission is studying?

MR. WICKWIRE: Well, the Commission is studying this sort of thing, and they would

like to know, I know, your views particularly on the question of legislation, or your suggestions in that connection.

MR. PIERS: I think that the role of the Better Business Bureau would be that private enterprise should go ahead on its own and not resort necessarily to the legislation of a law or an act which would force advertisers to do certain things which they know themselves they should not do.

I think, though, Mr. Chairman, that the problem would be this, that we will always have these violations which are on the fringe. Using our own statement, we claim that 97 per cent of business is ethical. But it is the three per cent that causes all the trouble. Or, using a simile which is sometimes used, if one bad apple is in the barrel, the whole barrel is going to go bad--or that at least we should not ostracize the whole barrel.

THE CHAIRMAN: You do not mean that the other 97 per cent will go bad, in this case, do you?

MR. PIERS: No, perhaps I have got myself turned around. But I remember two years ago--and I do not remember whether this came before the present Commission, or whether you have seen it; I asked your Secretary about it, as to whether he had seen it--but I am referring to a submission of a brief by the

Montreal manager under date of February 18, 1952, under the heading of an explanatory brief.

He refers to it as the objectives of a national trade practices board to assist Canadian business and the public.

THE CHAIRMAN: This document can be identified, and marked now as an exhibit.

EXHIBIT NO. OF-14: Document, explanatory brief, submitted by the Governor of the Association of Canadian Better Business Bureaux.

MR. PIERS: At that time I think there must have been something going on. I was in the west at the time. It is in regard to the possible formation of a trade practices board along the lines of the Federal Trade Commission of the United States, who, as you know, at various times issue with respect to companies what they term cease and desist orders. That might be helpful in this regard.

As to the general practice of the control of advertising, as we see it daily in the press, I think it is rather difficult to ask the Government to set up an Act to do that, because I do not think the public would like it very much.

MR. WICKWIRE: Also, do you think it would be difficult to amend existing legislation in order to control that kind of thing?

MR. PIERS: I do not happen to know what the existing legislation is. I have not got a copy of it.

MR. WICKWIRE: Well, I am going to read to you, Mr. Piers, section 406 (2) of the Criminal Code.

MR. PIERS: All right.

MR. WICKWIRE: It says:

Every person who publishes or causes to be published any advertisement for promoting either directly or indirectly the sale or disposal of any real or personal, movable or immovable property, or any interest therein, or promoting any business or commercial interest which contains any statement purporting to be one of fact which is untrue, deceptive or misleading, or which advertisement is intentionally so worded or arranged as to be deceptive or misleading shall be liable, upon summary conviction, to a fine not exceeding \$200 or to six months imprisonment or to both fine and imprisonment.

And then there is this proviso:

Provided that any person publishing any such advertisement accepted in good faith in the ordinary course of his business shall not be subject to the provisions of this section.

Now, it seems to me--just before you answer the

question--it seems to me that a person who publishes or who causes to be published any statement which is untrue, deceptive or misleading--and those are the things we have been talking about--should be subject to prosecution under that section. Would you tell me, from the point of view of the Better Business Bureau, why there have not been more prosecutions?

MR. PIERS: I do not think, Mr. Chairman, this is the first time I have heard the Act. We have never had any occasion to use it, myself. In fact, speaking purely personally,--do you say there are three words, "deceptive, untruthful---"

MR. WICKWIRE: It is "untrue, deceptive or misleading".

MR. PIERS: Yes. Well, you have to establish proof of that.

MR. WICKWIRE: Or when the advertising is intentionally so worded or arranged as to be deceptive or misleading.

MR. PIERS: Well, in one of the examples placed before the Commission, in regard to bait advertising, that can be termed as untrue or misleading. It goes to all the members of the organization.

MR. WICKWIRE: I am wondering why there have not been more prosecutions under that section of the Criminal Code; and I am

asking you, as secretary-treasurer of the Better Business Bureau, why that is so.

MR. PIERS: Unofficially, for the sake of this discussion.

MR. WICKWIRE: Unofficially, yes. I should like to know if you can suggest any reason why it is not used more widely to stop these practices of which we are complaining, and about which many others are complaining.

MR. PIERS: Yes, well--may I say personally that I would be inclined to think that probably the reason is that they do not know that that section is there. I must be honest with you in saying that I never saw the thing until you read it just now. I knew it was there, but I could not get a copy of it. If that is made available to everybody throughout the country--I think that is one of the reasons it has never been used. We certainly never have used it.

MR. FAVREAU: It might be because the section leaves too much room for the possibility of defence; because I think quite a degree of intention has to be proved under the section. That is perhaps why it has not been used more often.

MR. WICKWIRE: That might very well be.

MR. PIERS: It could be. I do not know whether Toronto and Montreal may have had instances of that kind. I cannot speak with any knowledge of that.

MR. WICKWIRE: There was one suggestion--or, at least it was mentioned before the Commission--in Toronto, where there had been a case in that city in which a newspaper took some steps to make certain that advertising appearing in its columns was truthful advertising, before it would allow that advertising to be printed and published. It was pointed out that in cases where the advertiser would advertise such practices as nailed down appliances, or untruthful advertising, that in future they would not take his advertisements. Do you know of any such instances as those practices throughout the country?

MR. PIERS: Yes. I referred to one when I was speaking to you about bait advertising in the city of Winnipeg.

MR. WICKWIRE: Yes, I believe you did. You said you were fortunate enough to get the newspaper to withhold further copy.

MR. PIERS: Yes.

MR. WICKWIRE: And that was in Winnipeg?

MR. PIERS: Yes. And I believe Vancouver has had such instances--although I do not know how many. But I did hear of one some years back.

That is a difficult question--at least it would be difficult to put into operation, I should imagine, by the newspapers. It has been

told to me here in town by our own advertising managers that to edit all copy that comes in over an advertising desk would be quite a job. My answer is, "Well, you will know when we notify you of the action of a certain firm, and then that would be one case where we would ask you to edit." But they do not do it.

MR. WICKWIRE: You mean, when at least there is ground for suspicion?

MR. PIERS: Yes.

MR. WICKWIRE: I suppose it would be asking too much of a newspaper to make any publishers responsible for the truthfulness of all advertising. That would be just asking too much, would it not?

MR. PIERS: Well, I think it would, yes--although newspapers from time to time, some of them, have been pretty sharp with some firms. I know of one newspaper with a worldwide circulation that I think we could mention. One can consider that everything they say, whether in advertising or in news matter, is absolutely authentic. I am referring to the Christian Science Monitor. I do not know of any other, although my newspaper friends at the back--because I was in the newspaper business some years ago; they may disagree with me--but I believe the Manchester Guardian comes pretty

close to it. And I think the New York Times comes in there, too. Certainly the Christian Science Monitor does. They will not accept anything like that.

Mind you, in those circumstances, every newspaper will at some time or another take something in good faith, and it will get by--sure. But, when they find it out, and we bring it to their attention that it is really flagrant--well, I could give you an instance in a case of vending machines. It was^a/vending machine operator from Toronto who actually stuck two farmers in this area for \$5,000. He came in here and got advertising in the newspapers. Both papers did not realize what had happened. When we drew it to their attention, they tried to get more space, but they could not get it.

MR. WICKWIRE: Thank you, Mr. Piers. I believe I have nothing further.

MR. PIERS: I would like to present this book, if I may, to the Commission. It is a book published by the Association of Better Business Bureaux, known as a Guide to Retail Advertising and Selling. In this we have drawn up suggestions on how to handle copy on different subjects. We would like to present it to the Commission, and I know they will find it helpful.

MR. WICKWIRE: How wide a distribution does it have?

MR. PIERS: It is used by all bureaux and it is available to all members of bureaux and all organizations who request it.

EXHIBIT NO. OF-15: Guide to retail advertising and selling, fourth edition.

MR. FAVREAU: Mr. Piers, in his first question Mr. Wickwire asked you about certain things which he had listed as a whole series of practices complained of before this Commission. You began with the first practice, and then you got on to another subject and it was not finished.

MR. WICKWIRE: We finished with bait advertising.

MR. FAVREAU: It might be a good idea to go through those.

MR. WICKWIRE: I am glad you raised that, because I had overlooked it. Are there any other practices drawn to your attention on which action has been taken? If so, what are they? For instance, the advertising of appliances which the dealer does not have in stock at all, or the advertising of goods which the dealer does not have in stock.

MR. PIERS: There have been one or two instances of that, but they are not very broad, because the difficulty was to get the information on them. We can only say that if a buyer goes into a store and asks for something, and they say that it is not there for sale, well, you

just cannot get it. However, I can tell you about some bait advertising, where they advertise an article that they have not got in stock.

MR. WICKWIRE: I suppose, now, Mr. Piers, that the illustration you gave us previously, about advertising certain clothing, and when the people arrived to buy it they were told that it had been sold to the clerks.

MR. PIERS: That the clerks had sold them to their friends, supposedly, yes.

MR. WICKWIRE: That is the same sort of thing. How frequently does that happen?

MR. PIERS: It takes place usually at the time of sales. That is usually when it is done. I am glad you asked me that because it is a qualifying question in answer to it.

THE CHAIRMAN: How often would that be, about?

MR. WICKWIRE: How general is the practice?

MR. PIERS: Not too general, I would say, and it is practised usually by firms that we look upon as those firms doing business in an unethical way.

Once in a while it has come to our attention that some of our recognized firms have done it. We call them immediately and, brother, they turn handsprings to clean it up. But it is not their general policy to

act in that way. Sometimes a local manager may do it, unknown to the general manager of the firm. But it is not done very frequently on that score.

You did ask a question about illustrations. The illustration in an advertisement which appears is not what the customer sees when he goes into the store--that is the allegation--or that it may be a better item. Well, we had a point not long ago in connection with a refrigerator. A firm was advertising a certain make of refrigerator under a price which was obviously for the purpose of sale. When the parties went to get the refrigerator, they found it was not as illustrated. The qualifying statement by the firm was, "We did not say so." I said, "You used it as an inference, and it was misleading." They agreed that they would not use it again. But, to use our term, the damage was done.

I think it is clear to the Commission, and I think you all know that illustrations are available to all advertisers from the cuts service of all newspapers. And if they are unable to get a cut of the product that they are selling, they have to resort to the mat that is supplied by the newspapers. And sometimes this mat or this illustration mat may not be too close to the article in question. And it happens often in connection

with home appliances and in furniture than almost anything else--and perhaps boots and shoes. Apparel is not too significant from that standpoint.

If the appliance is the appliance of a recognized manufacturer---

MR. WICKWIRE: A brand name.

MR. PIERS: Yes--he usually supplies the cuts. But this advertisement we had occasion to deal with, a matter of about eight weeks ago, it was not supplied by the manufacturer. So it had an element of being misleading, but we could not say definitely that it was. The point was that they were talking about refrigerators and they wanted them to see them.

THE CHAIRMAN: It was a refrigerator, but not the same in appearance or design?

MR. PIERS: Well, it was fairly close, but it was not exactly, no.

MR. FAVREAU: What was the relative frequency of that practice in relation to others, or is that unimportant?

MR. PIERS: It is hard to say. I think you will find in issues of all newspapers that the cuts that are seen there, in many instances, are not necessarily what you will see in the store.

MR. WICKWIRE: Will they be reasonably close to it?

MR. PIERS: Yes, they will be.

MR. WICKWIRE: For instance, take in the case of a television set, if a dealer advertises a G.E. set, and the set published in the paper is a G.E. set, and when you or I go to purchase that set, are we shown a Westinghouse set?

MR. PIERS: You could be, yes--you could be. You could ask for a G.E. set and---

MR. WICKWIRE: But if the publisher who supplies the cut does not happen to have a cut of the G.E. product, will he put in a cut of the Westinghouse product?

MR. PIERS: Oh, no.

MR. WICKWIRE: So that when you go, it will be a G.E. machine?

MR. PIERS: Oh, no, I think you will find that no publisher will have cuts available of a brand name, marked as such.

MR. WICKWIRE: No, because they will be supplied by the advertiser?

MR. PIERS: They will be supplied by the advertiser, yes. And if the advertiser does such a trick--and it has happened--he is in hot water, good and plenty, from two sources--from Westinghouse, from G.E. and from us. And the whole three of us would be on his tail.

MR. WICKWIRE: That is very infrequent?

MR. PIERS: Yes, very infrequent.

MR. WICKWIRE: Have you have any instances of complaint of pictures of more

expensive models in advertising lay-outs being exhibited, and then when you go to the store you find the ones for sale are of cheaper quality?

MR. PIERS: I think that is the answer, perhaps, to the fact that newspaper cuts are used, and a man selecting a cut--I know in my own days of advertising I would take a cut as near to the thing as I could. It might be a cut that you might think, relatively, was a good deal more valuable, from your own point of view, and mine might be quite different.

MR. WICKWIRE: But the instance you complained about, is that because you did not have a cut that was on all fours with the article, and you got one that was the nearest thing to it?

MR. PIERS: Yes.

MR. WICKWIRE: And there was no intent to deceive?

MR. PIERS: No, none at all.

MR. WICKWIRE: Do you know if that practice has been used with intent to deceive, not by the publisher but by the person paying for the ad? Do you know of any case that has been brought to your attention of that kind?

MR. PIERS: Well, I can recall one-- it was away back, a good many years ago. I cannot recall it exactly, because I have

forgotten some of the details; but I do recall one. And I remember that the upshot of it was that the party using the cut was given a pretty bad handling by the parties whose cut they used.

MR. WICKWIRE: Or of advertising obsolete models as current models?

MR. PIERS: That could happen.

MR. WICKWIRE: Has that practice been extensive?

MR. PIERS: No, not extensive, I wouldn't think so. But it is used, I am afraid, because they have not got the up-to-the-minute model. We generally will tell them, "You should qualify that."

MR. WICKWIRE: In your experience, I take it the principal complaints with respect to advertising are nailed down appliances and bait advertising?

MR. PIERS: Yes.

MR. WICKWIRE: And that that is quite general?

MR. PIERS: I would rather not say "quite general". I would say it crops up from time to time.

MR. WICKWIRE: From time to time?

MR. PIERS: Yes.

THE CHAIRMAN: A small percentage of the total number of stores?

MR. PIERS: I would say so, yes.

MR. FAVREAU: Have the American bureaux made any kind of report to the other bureaux concerning their experience with respect to the application of certain American state laws concerning bait advertising--such as in California, for instance?

MR. PIERS: I am afraid I cannot answer that, because the operation, as we know, between the two countries is so different. There are certain things that take place that never seep across the line.

I have in mind one procedure--and I have just forgotten how we termed it--but it was in connection with the sale of automobiles, and some very high financing stunts. We have not had that in this country, at all, anywhere--even in Toronto or Montreal, where these things usually crop up. We have not had it, at all.

So that I am afraid that, while we might know generally the operations and actions across the line, we would not pay too much attention to it. We generally like to consider that our Canadian laws are just about tops. That is what those boys down there think of us, anyway.

THE CHAIRMAN: I should like to be quite clear on one point. From your evidence I gather that your activities, and what you refer to as your functions, are in the field of personal dealings with the firms complained

about, rather than having recourse to the law and the courts, and that because of that there have been no extensive studies made by the Bureau of the legislation?

MR. PIERS: That is right.

THE CHAIRMAN: Or of any shortcomings that they may think exist?

MR. PIERS: That is right.

THE CHAIRMAN: And you have no specific suggestions to make with respect to amendments of the law?

MR. PIERS: I don't think so, no.

THE CHAIRMAN: And do you feel that, in the main, the activities of the Bureau, coupled with what assistance they may find it necessary to call in, from enforcement officers, is pretty effective in eliminating at least partially, if not entirely--at least reducing it to a very small amount--these false and misleading practices which you have been discussing?

THE CHAIRMAN: You think it has been pretty effective, with the assistance of these enforcement officers?

MR. PIERS: We do, yes. And there are instances where we have been able to eliminate the action. In others we have been able to curtail it to a great extent, depending upon its seriousness. Of course, if a thing is really serious, then we suggest to

the parties that they go to the courts and we help them.

THE CHAIRMAN: Thank you for appearing here today.

MR. PIERS: I thank you for the opportunity.

---Recess

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---Upon resuming

REPRESENTATIONS:

Canadian Association of Consumers:
Mrs. H. E. Vautelet, C.B.E.,
National President.

THE CHAIRMAN: I believe the next presentation is on behalf of the Canadian Association of Consumers, is it not?

MRS. VAUTELET: May I bring my fortifier with me?

THE CHAIRMAN: Yes.

MRS. VAUTELET: Mr. Chairman, may I say before beginning that we had to prepare this submission with an understaffed office, due to the holidays, and I find that there are two or three errors in typing and copying. I shall try to draw your attention to them as I go along. In at least one case it changes the sense of what I say, and in another case there is an error in a word. I shall draw those to your attention, if I may, as we proceed. Shall I begin now?

THE CHAIRMAN: As you wish. You are free to make a preliminary statement before you read, if you wish.

MRS. VAUTELET: That was my preliminary statement, Mr. Chairman. The brief I am presenting is as follows:

In presenting this further submission to these hearings, the Canadian Association



of Consumers wishes to complete its statement of position on possible loss-leader legislation in the light of an examination of the various other briefs presented in the course of this inquiry. It also wishes to re-state and place on record its position on an issue which many of these briefs have substituted for that of loss-leadering, the question of resale price maintenance.

In reviewing the submissions presented to this Commission which have come to our hand, we have been unable to find any arguments of a nature to alter the views on what might be acceptable loss-leader legislation as stated in our main submission of last June.

We found that many briefs presented before this inquiry outlined very real and often painful problems besetting a retail trade in process of moving out of a long drawn-out, comparatively easy "selling market" into a more normal but more difficult "buyers market". As a consumer association may we say here that we are examining the testimony of retail problems which these briefs provided, and that where consumer understanding and improved consumer wisdom in buying may be a factor in solving these problems, we will try to present such facts to our members and

consumers generally as may encourage them to be part of the solution of these problems, not part of the problems.

The major problem that seems to beset Trade and Industry at this moment, however, appears to us to be simply "competition" in either straightforward or more subtle forms; and the majority of views presented seem to be mainly pleas for a limitation of the more painful aspects of this competition where the particular trade or industry testifying is concerned. We have always understood that competition was the "weather" of trade, as the elements are the weather with which farmers must compete, and just as it is not possible for farmers to choose their weather or appeal to society to protect them against it, we fail to see how individual selling groups can hope to adjust their "weather" of competition to the level each group thinks is easiest to meet. Nor do we see how in the long run the businesses concerned would themselves benefit from an outlawing of all forms of price-competition save that of their own choosing. Unless the interests pleading for one or other stringent form of loss-leader bans, such as compulsory uniform mark-ups and cost-plus principles, really believe that

undercutting their preferred prices is financially unprofitable - hence economically unjustifiable for those who do it - (in which case such altruism towards the consumer would rapidly cure itself through extinction of the altruists). It seems evident that what they wish to ban is a financially rewarding system of selling they themselves do not wish to adopt. In most cases no ethics of selling seem involved in the methods of pricing cited - though one or two might be questioned - but only a conflict between those who choose rapid turnovers and small mark-ups and those who cannot, or will not, use the same system.

Since it is not predatory price-cutting but merely inconvenient, and in some cases painful, methods of pricing and selling that are in the main cited as reasons for freezing resale prices by law throughout the land, we wonder if the cure suggested would not tend to produce chiefly three results, none of them profitable to anyone over a long period of time, though there might be profit to a limited group of retailers over a short-term period. As we see it the consequences of a price-maintaining form of loss-leader legislation would be:

(1) Reduction of the consumers' buying powers. We are puzzled actually by the belief, implicit in the plea of some selling groups for protection against challenge to their own higher mark-ups; that consumers - like the public's idea of government - have limitless funds that can be tapped without exhaustion. Since the more consumers must spend on one article or category of goods, the less they will have to spend on other articles or categories of goods, the end result of making buying more expensive for consumers is to limit his buying to a narrower range of goods; to penalize all production, and to lower in the long run consumer standards of living.

(2) The second point of consequence would be to diminish the spur to retail efficiency by removing the major item of price as an ingredient in competition at the retail level. This tends to allow partition of a local market between more retail outlets than are needed by that market, and to allow three dealers in one class of goods to exist marginally where two might live with profit - with consumers paying the initial price for such saturation and the dealers involved suffering over a longer, hence less visible, period.

We do not think it mere coincidence that it is in the one-time resale price maintenance areas of trade such as the pharmaceutical, appliance and grocery fields, that the heaviest competition as to numbers of dealers in small localities exists. Many small communities that could provide a good living for two drug stores, perhaps three groceries and one or two electrical appliance outlets, are barely supporting three of the first and last categories and four or five retail grocers. This multiplicity of weak retail outlets tends to confuse consumers, is of advantage to the chain stores, discourages a steady consumer-clientele and is a direct consequence of the artificial "protection" through price maintenance of the past. We cannot see how a new form of price freezing through wide loss-leader legislation could produce any different result.

I might point out that the word "wide" was one word that was forgotten in the preparation of the brief. It continues:

(3) The third consequence seems to us an inevitable future partnership between consumers and bootleg, cut-price dealers that has usually been the answer to limits on personal rights - not justifiable ethically. One cannot eliminate by law the logical desire of consumers to get the most for their money. One cannot

wipe out initiative and efficiency amid individual retailers and the normal wish to make more money through freedom to sell at mark-ups considered personally most advantageous, merely by calling it unfair - a charge difficult to bring logically, it seems to us---

And the words "it seems to us" were also forgotten. ---against any form of competition in which there is freedom to use the same methods as the other fellow.

We are inclined to believe, after considering the briefs that have reached us--- The word "us" had also been forgotten. I am sorry for this clumsy job; this is the holiday season for us.

THE CHAIRMAN: The word "us" is in our copy, all right.

MRS. VAUTELET: It continues:

We are inclined to believe, after considering the briefs that have reached us that the interests pressing for general price-fixing relief are arguing chiefly from the level of their immediate needs, not from a long-range view of the consequences to themselves as well as to others of the remedies they ask. In some cases they appear to be arguing from the basis of what they fear will happen, not what has happened. A case in point is the admission in the

cross-questioning before this Commission after presentation of one appliance brief that sales had not dropped off...had in effect risen...but that it was foreseen that they would drop off. Our Association could as logically plead for price-control at 1946 levels because we feared that consumer buying-powers might return to that level.

We do not feel, therefore, that we are acting against the interests of the groups we are forced to oppose in arguing against all loss-leader legislation except predatory price-cutting.

The word should be "except". In the copy the words "but against" appear. It should be "except".

The interests of these groups are closely tied to consumer interests. They cannot profit for any length of time unless these consumer interests are well served and protected, nor can they profit on a long-range basis through immediate remedies that must be paid for through a reduction in freedom and in enterprise. It is as much in the interest of those who sell in Canada as of those who buy that we reaffirm the position stated in our earlier brief, where we said: "The Canadian Association of Consumers opposes any definition or recommendation against 'loss leaders' that

represents merely protection of retailers against competition when that competition is not predatory. Where use of cut prices becomes in its turn a means of destroying competition, however, we endorse any necessary and fair strengthening of legislation that may be needed to police such practices".

In relation to this attitude we wish to comment on two of the briefs presented to this Commission in the course of this inquiry. First because we feel that both made serious efforts to offer constructive solutions for identifying and handling predatory or debatable forms of loss-leadering - solutions that did not merely seek to pass on the bill for protection to consumers - and secondly because we welcome the approach to our Association's attitude on loss-leader legislation and resale price maintenance embodied in both briefs. The briefs we wish to mention are those of the Retail Merchants Association---

I should say that here there should be added the words "National Foods Division, and the Saskatchewan Retail Merchants Association." I continue;

---and of the National Council of the Baking Industry. We do not feel equipped to comment on the feasible aspects of the

suggestions made in these briefs. We can see, however, no prejudice to consumers in either of their formulas. Whether they are workable or not is a matter we will not try to deal with. As an earnest of constructive attempts to find their own solutions on the part of an important segment of Trade we welcome both submissions.

RESALE PRICE MAINTENANCE

When our earlier brief to this Commission was prepared there seemed no reason to extend it beyond the terms of reference given by the Commission. Since then, however, we have seen the debate brought more and more into the field of resale price maintenance privileges. This displacement of the issue has, we believe, confused the real question being examined and has prejudiced to a point the cause of those who may genuinely require additional protection against predatory price-cutting. It obliges us to state once more as briefly as possible our Association's attitude in relation to private price-fixing practices.

Since the last of our three briefs on resale price maintenance fully covered, in its presentation to the Joint Parliamentary Committee examining the issue, all the facts and figures governing our position in this matter, we wish merely to re-state here a

few of our reasons for urging this Commission to disregard the arguments that the law against price maintenance should be repealed and to offer answers to some of these arguments.

We would, first, like to question the charge that the present law on price maintenance is a direct interference with business freedom. It seems to us obvious that the reverse is true and that what now exists is the LAW stepping in to ~~ban~~ a private law that deliberately did interfere with freedom in business, e.g. - the freedom of a retailer to charge what he chooses to charge for goods he had bought, paid for and fully owned. If, as has been suggested, manufacturers should have freedom to set the resale prices of their products, should not retailers have an even greater right to set sales prices for the products which are wholly theirs by right of purchase?

Moreover can freedom of this sort be limited to one group alone? Could Canada envisage calmly an economy where the builder of a house retains the right to set its resale price? Where the farmer could claim the right to fix his farm and dairy products resale cost levels? Or the artist what his signed painting must bring if resold? Should not Rights and Freedoms in a free country - words we play with rather lightly -

apply all across the board? When they cannot be so applied - and we suggest that even those pleading for a return of resale price maintenance privileges would draw back from the consequences of a general application of such privileges, when they cannot be so applied---

And those words should have been repeated in the brief.

---freedoms of this sort become an exploitable "special privilege". We believe that any principle that cannot be applied reasonably or fairly outside of a special case should be deemed as suspect.

The manufacturer claiming resale price maintenance rights - though chiefly, we believe, at the instigation of his retailers who want this protection against price competition - actually buys in a price-free market the materials needed to produce his special article. Both manufacturers and retailers buy most of their personal needs in a free and competitive selling system. As consumers they are generally, or in roughly 80 per cent of their buying, protected by free price competition. As sellers we fail to see how they can ethically claim protection against such competition.

It has been repeatedly claimed that a section of Trade and Industry will be unable

to survive if they continue to be deprived of price-fixing rights. At the time of the last resale price maintenance hearings, it was roughly estimated that only about 20 per cent of our retail and manufacturing interests practised this system. We question, therefore, why a price-free, competitive market system under which 80 per cent of Canada's selling world manages to survive, and by and large flourish, should be a system this special 20 per cent cannot live under...unless the explanation is that their very past private law of special protection has rendered them incapable of meeting competition; in which case the system condemns itself.

That there may be some suffering among elements of the groups that were for long exempt from price competition seems to us inevitable if regrettable and hardly an argument for removing the present ban. Progress in basic ethics is never painless. As an extreme example, the abolition of slavery economically ruined thousands of families in the United States and more industries throughout the world than we can estimate. Should slavery have been continued because of this?

It has been widely argued that price maintenance does not raise costs to

consumers. We fail to see how this thesis can stand. A manufacturer must necessarily fix his resale price at a level high enough to give a fair profit to the retailers with the highest overhead... one in a luxury field or a high rental district for example. Otherwise such dealers could not stock his product. It is this price subsequently that is then frozen arbitrarily across all Canada, or wide sections of Canada. Resale price maintenance tends thus to exploit in particular the lower income and rural groups, by imposing high rental and overhead set prices on everyone irrespective of local variations in retailer expenses. It cannot avoid doing so.

Inevitably such a system was valuable to the retailer using it, though it would have remained valuable only as long as it was restricted to a small area of trade. In numerous occasions it gave him a mark-up far in excess of what he would have normally charged in a price-competitive market, and since his competitors could not undersell him, he had smaller need than most to improve his own efficiency. The energy with which the 20 per cent of Trade and Industry concerned with this system is

fighting to regain it is proof in itself of how profitable--hence how expensive to consumers--the mark-ups under this system must have been. The figures given in our Association's resale price maintenance brief of three years back are in themselves revealing.

Moreover since the cost of doing business varies vastly between the big city store and the small village retailer who may own his own shop, and even between one section of the land and another and one section of a city and another, it seems evident that nationally fixed prices can hardly avoid exploiting more people than they serve...if they serve even these.

We have already mentioned the tendency to load too many retail units on a local market that was fostered by the elimination of price competition through resale price maintenance. Such protection can be an expensive luxury to those it shelters. Most of what we have previously said about protection against loss-loading applies equally to resale price maintenance, since loss-leader legislation, except in relation to predatory aspects of the practice would be resale price maintenance. Price maintenance reduces consumer buying power and also spreads it more thinly. It

tends to aggravate rather than ease competition...but in a manner that does not bring the usual protection of competition to consumers. The evidence in the United States...where Fair Trade Laws of extreme arbitrariness came in almost at the moment when Canada was freeing herself of the system...indicates that Trade has simply created the Discount Houses in restricting its normal price competition with the retailer across the street. The present law in the United States is not protecting Trade - this is openly admitted by the trade itself - it is merely mulcting consumers, and manufacturers are driven to avoid its penalties by trading with discount houses behind their own retailers' backs.

We regret, in the interests of consumer-retailer relations, the protracted and tenacious fight resale price maintenance interests are carrying on to recapture this dubious protection. We suggest that consumers have an indisputable right to the only protection against exploitation they possess - outside of the dangerous one of government price-control - that is, free price competition. They have a right to believe that a system under which 80 per cent of the selling side of Canada flourishes is one the 20 per cent price

maintenance groups can also live under and flourish. Consumers have been called on innumerable times in the past to pick up the bill for various protections that those who sell in Canada have asked for and obtained from government, or have created for themselves as with resale price maintenance. Today they are unpleasantly impressed by the continuing refusal to accept one of the infrequent bills for consumer protection now laid at the door of Trade and Industry. We hope that this is the last time our Association will have to speak to this issue.

THE CHAIRMAN: Thank you. Do you wish to add any comment yourself?

MRS. VAUTELET: No, I have no comment to make.

THE CHAIRMAN: Then, perhaps Mr. Gerin-Lajoie would have some questions to ask.

MR. GERIN-LAJOIE: Mrs. Vautelet, perhaps you could explain a bit more fully a particular point or two mentioned in your brief.

MRS. VAUTELET: At what page?

MR. GERIN-LAJOIE: Looking at the first page, you will see in paragraph three the following:

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The major problem that seems to beset Trade and Industry at this moment,

however, appears to us to be simply
"competition" in either straightforward
or more subtle forms;

I wonder if you are in a position to say that
your Association, or people in Canada, to
your knowledge, are complaining--apart from
reading the evidence before this Commission--
that people are complaining about loss leader-
ing practices?

MRS. VAUTELET: Do you mean if the
consumer is complaining?

MR. GERIN-LAJOIE: Yes.

MRS. VAUTELET: Because a lot of
people are complaining.

MR. GERIN-LAJOIE: Among the con-
sumers, I mean--either your Association, or
groups or individuals?

MRS. VAUTELET: We have met the odd
individual among the consumers who has com-
plained at a public meeting, when this issue
was being debated; and in every case we have
been able to trace they are the wives of
retailers who belong to the resale price
maintenance groups. And, though we feel they
are fully entitled to their point of view--
and, indeed, if there were enough of them we
would begin weighing it--they generally turn
out to be one, perhaps, in a meeting.

May I give you an illustration? I
made a tour of our branches in Ontario in May

and June, and the questions of resale price maintenance and loss leadering came up in questioning from the audience. In two cases out of six meetings, one individual member stood up and claimed, defended, the right of the manufacturer to fix prices for the benefit of the retailer. That means that out of six meetings, in which there were perhaps about six hundred women present, we had two members who protested. And, in each of those cases, there was an emotional interest in the matter.

MR. GERIN-LAJOIE: Now, Mrs. Vautelet, you very kindly, apparently, expressed sympathy with the approach of two groups to the so-called problem of loss leadering. I refer particularly to page four of your brief. I wonder if it is your opinion that there is any need for legislation at this time against the loss leadering practices in Canada?

MRS. VAUTELET: That is a difficult question to answer. Of course, we have not seen all the briefs presented to this Commission. But some of them seem to have been suffering from acute pain. We are not in a position to say that this pain is not real. Our Association is not very keen to present the side of the consumer exclusively, if the consumers' interests come in conflict with valid interests of those who sell. We are not in a position, like this Commission, to evaluate the testimony, as to

how true these claims of agony we have heard in the briefs may have been. Our consumers are inclined to believe that they are not very important. I am not at all sure that our consumers are fully equipped to know whether they are important or not; and that is why I have refused to pass judgment in the matter.

We do realize, after listening to the testimony of the Better Business Bureau, that this question of exploitative price cutting is confirmed. And that is to the interests of no one, so far as we can see--to ourselves, or anybody else. But what we welcomed in this paragraph, here, was the psychological indication of a genuine and carefully thought out effort on the part of a segment of trade--an important one--to present its own solution, without simply saying, "Let the Government save us, and to hang with the consumer."

Also, we want to stress here the fact that we can see nothing in these suggestions that would be prejudicial to consumer interests, as our Association sees them.

MR. GERIN-LAJOIE: Now, in this connection, I notice that your Association---

MRS. VAUTELET: What page?

MR. GERIN-LAJOIE: I am looking at the bottom of page six, but you refer to this point elsewhere in your brief, also. I do not have the exact reference.

MRS. VAUTELET: You are referring to retail units?

MR. GERIN-LAJOIE: You say that there are too many--or that most probably there are too many retail units on any local market at the present time.

MRS. VAUTELET: Many--not all. I think we refer to that at the beginning, on the second page, at the bottom of the page.

MR. FAVREAU: Your second alleged consequence?

MRS. VAUTELET: Yes, where we say:
To diminish the spur to retail efficiency by removing the major item of price as an ingredient in competition at the retail level. This tends to allow partition of a local market---

MR. GERIN-LAJOIE: In this connection, have you examined in some way the proposal made in particular by the Retail Merchants Association of Saskatchewan. You understand, I imagine, that under that proposal a particular retailer would be obliged to resell the merchandise he offers for sale at the consumer level to other retailers, less a mark-up or a percentage determined by law. Would you not be afraid that under such a practice we might end up with keeping the same number of retailers as we have now, because all individual retailers would be in a position to benefit from the efficient

buying power of some large firms, for instance?

MRS. VAUTELET: Do you mean that a marginal retailer in a small centre, such as we have noticed in our Association, what might be called the saturation of a market in some field--that in small centres, if there was a competent--and I am just trying to clarify this in my own mind--if there was a very efficient shopping centre, we will say, or a big chain store--and I am thinking of one particularly in Quebec at the present time--within driving distance, that the retailers who are being penalized by the consumers bringing their custom, their buying, to the large centre, could go and require, under this formula, the sale to them at reasonable reductions of the goods they cannot compete with?

MR. GERIN-LAJOIE: Quite so.

MRS. VAUTELET: In their own locality?

MR. GERIN-LAJOIE: Yes. And they would be kept alive in that way.

MRS. VAUTELET: No, I do not think it would affect the situation we mention here. I do not know if it is feasible--and that I am leaving out of the question. You are asking me for a snap judgment, and in replying I am trying to confine myself to three or four cases upon which we base this remark in here.

If the number of retailers in a

small town--and generally these are large villages calling themselves towns--is more than the market can sustain in free competition, the fact that they can get a free, or what I might call a fair chance, at goods which they cannot buy as cheaply from a wholesaler, because they are buying in small lots, but which the retail big stores can buy more cheaply, should not affect their existence in competition with each other. They will still have to compete in other fields, and I do not think it would enter into the picture.

All they would be given there, if they really could use this method--and perhaps lack of cash might make it difficult for them to use it, I don't know, because, again, it is technical--but they would be given a fair chance of getting goods at a low initial cost--and, again, I am sorry that I have not the proper technical phrase--for this purchase, at the wholesale cost, let us say, which they cannot get in their dealings with the producers.

A case was brought to our attention not very long ago in the Province of Quebec, in connection with hams being sold in certain chain stores around Eastertime at a price below the cost level which the small dealer had to pay in buying them from the packer. This, of course, was the penalty which the packer--the trade itself--imposed upon its small outlets, and which we protested against in our earlier brief

as being unwise on the part of the trade, and of the basic provider.

But if in one case there are four grocers--they could normally carry two grocers--but the fact that they can get their goods at competitive prices from the wholesaler is not going to affect their existence in their locality. Whereas the fact that their neighbouring grocer cannot undersell them would allow them to maintain their existence. Perhaps what I have been stating would happen more often in connection with druggists.

There is one case I know of where there are two druggists living on a most marginal existence in a small township, beside two others who are doing very well. Except under a system of price maintenance they could not possibly have kept in existence; the two others would have been wiped out. It might have been rather harsh, but they are really just penalizing the more competent pharmacists in the village by just existing and getting the fringes of the income of the others. They are barely existing, themselves, and in the long run would probably benefit by being forced out of business, in that they are superfluous--into either another village or another profession.

THE CHAIRMAN: I think what Mr. Gerin-Lajoie was wanting to get at was your

opinion on a slightly different aspect, that if these small dealers who are normally unable to buy in wholesale lots, were unable to get under the formula of the Retail Merchants Association of Saskatchewan goods at very nearly that level, by obtaining them from a retailer who did buy them in that fashion, would they not be in a better position to compete with large-scale retailers and secure more of the business of the locality, and thereby be better able to maintain themselves?

MRS. VAUTELET: They would be. I do not think it would affect their competition with each other, since they would all have the same right. I understood Mr. Gerin-Lajoie was asking whether they would not maintain the marginal cases.

THE CHAIRMAN: I think what he meant was that it would give them a better chance to survive because they would get more of the total business by taking it away from the larger and the more efficient operators.

MRS. VAUTELET: It seems that it would tend to even out the competition between the massive, large competitor and the small competitor. But it does not strike us as having any influence on the competition between the smaller ones in one locality, because they would all have the right to claim the same privilege. They would be getting some business

away from the big store.

THE CHAIRMAN: But it would give them a better chance to survive.

MRS. VAUTELET: A better chance, yes.

MR. GERIN-LAJOIE: I wonder if your organization, or you yourself see any reason why, for instance, a large number of tobacco retailers, let us say in the Province of Quebec, for instance, should be preserved and protected by some kind of legislation like resale price maintenance? It has been suggested to this Commission that many such retailers are disabled persons, persons who would not be able to do any other type of job, and who would be a charge on the community if they were not holding these particular tobacco stores. Do you see any reason why those particular people, in that trade, should be protected by some kind of legislation; or would you include them in the same general statement that was referred to here, regarding the number of retail outlets?

MRS. VAUTELET: I think I have indicated, in a further statement, that there may be some suffering among elements of groups concerned. This is a difficulty, because many elements play into it, from the point of view of public sympathy. It would be considered from the point of view of public sympathy, and evidently public sympathy would go out

to those sacrificed on the altar of ethics--or who may have to be offered up.

Our organization can see, however, no justifiable argument why the consumer must pay the price of protection toward the segments of an industry which are penalized by the behaviour of elements of that industry itself. As I think we mentioned in our previous brief, the case of the small cigarette dealer seems to us to exist--and there again I may be speaking without the necessary technical knowledge in the matter--but it seems to us to exist because the wholesaler is playing favourites in the prices he grants to his large outlets and small outlets.

THE CHAIRMAN: Do you mean the wholesaler or the manufacturer?

MRS. VAUTELET: The manufacturer, yes. The manufacturer is playing favourites. We can conceive of the difficulty of the manufacturer's position in relation to his desire to keep his distributor or wholesaler in the business. But we are also wondering if the manufacturer has seen far enough ahead, since he is now taking an attitude that is bound to destroy a large number of his smaller outlets, and to leave him sooner or later at the mercy of his few larger outlets.

That, however, is his problem, not the problem of the consumers. Nor should what he is doing to his own retailer outlets be the

problem of the consumers to the extent that the consumers must pay all along the board, right across Canada, to protect his own outlets from what the manufacturer is doing to those outlets.

MR. GERIN-LAJOIE: Mrs. Vautelet, that was one point that was raised before this Commission, most certainly. And I believe there is also a second point regarding the cigarette trade and that is, I take it, that the mark-up necessary to a grocery store is lower than the mark-up necessary to operate an ordinary small tobacco and confectionery store. So if we were to continue the present competition, it is felt by the tobacco retailers that many of this group would have to go out of business. Do you consider this as a normal play of competition which we have to contend with?

MRS. VAUTELET: I do not know if it is normal, but it seems to me inevitable--that is, unless we are going to take this principle and apply it right across the board, where we shall continually protect the small man against the more efficient methods of sale, as they come up in the future.

Inevitably, Mr. Gerin-Lajoie, it seems to me that these are not the last challenges that are going to come up in the way of finding out more efficient means of distribution.

Indeed, I can see visions of a picture in the dairy industry, where laws will be asked

to protect the small trucking company that may be forced out of business, and who may lose the business of the local farmers in their milk trade, if the infinitely more advantageous system of the large tank collecting truck, which is now being used in many places in the United States, comes into being in Canada.

I can see dozens--hundreds--of other fields in which, the moment a more efficient method is introduced by means of quantity collections, or quantity buying, or quantity savings, our Government will be called upon to pass laws by which the public cannot benefit from this system, simply because some man who is being threatened by the system requires protection.

Would this be fair to the consuming public of Canada; would it be fair in the long run to our industries and trades?

Would it not be a bar, a continual bar, to expansion and better methods?

MR. GERIN-LAJOLIE: Well, Mrs. Vautelet, the answers are to be given by you, not me.

THE CHAIRMAN: Are not these things simply evidence of competition, as you have mentioned?

MRS. VAUTELET: Yes; almost all the instances we have mentioned in our brief--perhaps not quite all--seem to be protests against various forms of competition, in which improved methods represent one of the

aspects of those forms of competition.

MR. GERIN-LAJOIE: That is all I have to ask, thank you, Mr. Chairman.

MR. WHITELEY: Madam Vautelet, in regard to the proposal put forward by the Retail Merchants Association of Canada (Saskatchewan) have you considered at all the possibility, from the viewpoint of consumers, that the enterprising merchant, who is always on the endeavour to secure special attractions for his customers and that has put him in a position to offer them something which some of the other merchants did not offer, would tend to lose some of that incentive if he knew that every bargain that he secured for his customers could be matched immediately by his competitors securing from him or through him the same goods to offer to their customers?

MRS. VAUTELET: Mr. Whiteley, that is a possibility. It seems to our Association that almost any law that is not a great protective law against absolute predatory systems, must tend, inevitably, to reduce the incentive to progress and trade.

Whether it would actually operate in that way--we tried to discuss it, and felt that we were not in a position to know that.

MR. WHITELEY: Do you see no prejudice, you say?

MRS. VAUTELET: We tried to evaluate

it in this way, to the extent in which we felt that this would be used--and we might have been wrong in this--but we felt that if this system was accepted, its use would be more by default than in operation. We felt that the knowledge that this could be retaliatory, a retaliatory measure against someone who was really practising predatory price cutting, would reduce the incidence of predatory price cutting. And reducing the incidence does not do any serious harm to the consumer, because temporary predatory price cutting is not to the lasting benefit of the consumer.

If it was widely used--which at that time we were not considering; we were considering it merely as a threat in the argument--it might possibly tend to reduce incentive. There are quite a few things that already do reduce incentive.

I would say, as a snap answer at the present time, that the reduction would not be strong enough to affect consumer interests very deeply. The need to do better would still be there. And if a man is able to offer a bargain, through taking an unfair advantage, below profit, or at a straight no-profit level, it either has to be temporary, or else, if in the nature--and let me say what worried us a little bit was the testimony of the bakers, although I don't know how well-founded it is,

that when you use one special item over a long time, year after year, you damage the whole trade. We did not really know if bread was being used as a loss leader to that extent. But we felt that their point was very well taken, that if you sell below cost for a whole year one special article, that you are aiming an enormous amount of pressure against one special trade, and that is not in the interests of the consumer, if a trade is to be under too heavy pressure.

On the other hand, if you are selling above cost and clearing a reasonable profit, would it be possible for the small grocer, for example, to buy at the same price a small quantity of your product, and then resell it at the same price to the degree where it would destroy incentive in the general outlet?

MR. WHITELEY: Well, I think in the grocery field a large part of the products are sold in that field at margins of about 10 per cent. If every grocer could go to his competitor, who makes a particular deal, and get from him goods that he can, in turn, sell at a margin of 10 per cent, then he is getting in that way a large part of his normal mark-up.

MRS. VAUTELET: Quite a few of them would get a large part of the normal market.

MR. WHITELEY: No, mark-up. He is then getting 10 per cent, which is what he

gets on a large part of his produce.

MRS. VAUTELET: We would have to study it at greater length. But, as I said, roughly speaking, I did not see any very serious prejudice to the consumer in slightly reducing the incentive--competitive incentive.

MR. WHITELEY: But take the other case which appears in the formula, where a merchant decides to clear a certain item. As I read it, any competitor can purchase from that merchant one-quarter of his stock. If four of his competitors came in, he would be out of stock completely.

MRS. VAUTELET: That is an interesting point, I think. I thought there were limitations in the brief, and I had not studied it from the point of view of defending it.

MR. WHITELEY: The only point I was interested in was that you say you can see no prejudice, so far as you have studied it.

MRS. VAUTELET: I have not had the opportunity to find out how the formula would work out, or how it would affect the trade itself. But the ability to allow the small competitor access to goods, for which he is charged what we think are rather unfairly high prices, by the basic manufacturer or producer, so that he could compete on a little easier level with the menace of the

massive competition now facing him by way of chain stores, and so on, struck us as being more to the interests of the consumer, if anything. Because consumers are more interested than they realize in keeping the small retailer on an efficient competitive basis, so that they can keep him and make use of him. They will benefit no more than the manufacturer of cigarettes, for example, if the local outlet is forced out of business. They would be just as much at the mercy of the few competing chain stores as the manufacturer would be at the mercy of the competing chain stores.

Most consumers we have questioned want to keep some number of their small retailers, though they feel that in a few fields there are too many of those retailers. Now, how they can keep them is the question, if they are not given some form of protection, some access to equal buying advantages with the big stores.

MR. WHITELEY: Well, is it your opinion that it all bears on the question of the manner in which they purchase? In other words, if one retailer sold boots to his purchasers, and secured terms in relation to his scale of buying, do you think every other retailer should be put in the position to take advantage, when they do not buy in the same fashion?

MRS. VAUTELET: We have seen the testimony of the tobacconists in Manitoba who tried to buy on the large scale level of the large tobacconists, and were refused by the manufacturers. So it does not seem to be only a question of their failure to have the same facilities, since when they have offered to institute the same facilities they have been set aside, in some cases.

MR. WHITELEY: But this formula makes no distinction as to whether this field is open to them to buy on the same basis, or whether it is closed to them.

MRS. VAUTELET: We thought it might discourage efficiency. We would have to study to what degree it would discourage efficiency, because a small discouragement of efficiency on the part of the very efficient chain stores would not affect the consumer very greatly one way or the other. However, if there was a big discouragement of efficiency, it would of course affect the consumer.

MR. WHITELEY: Why would it not affect them, in degree, to the extent to which the efficiency is reduced?

MRS. VAUTELET: If the efficiency is of such a nature as to kill out the smaller retail outlets, that is prejudicial to the consumer, also.

MR. WHITELEY: If it is efficient?

MRS. VAUTELET: Yes, even if it is

efficient. Take someone living 20 miles away from the nearby market. Some of them have automobiles, and some have not. They depend, to a greater degree than many of them realize, upon local outlets. If the local outlets find, as in the case of hams at Easter, that they simply cannot stock them, simply because of the buying power of the ones who cannot reach the big market, the consumer who cannot reach the big market finds himself minus the required competition by local outlets they will require in the future. Whereas, the consumer who can reach the big market, by carrying trade to the big market, is reducing the income of the local man to the point where he cannot live on the income of the ones who need him.

I don't know if I am making myself clear or not. Would you like me to have another try at it?

MR. WHITELEY: Does that not apply in a great many fields? We have heard the same argument in connection with bread, that those who buy their bread at the store, at the same price as it is delivered at the house--that the householder is then prejudiced.

MRS. VAUTELET: I think it would apply in any field. It is not to the interest of the consumer in any field to eliminate totally or even to reduce too drastically the small outlets. They are contributing in many

ways in doing it, by going toward the cheaper fields in buying.

MR. WHITELEY: Do you believe that is the consumer's choice, as to which outlet he should patronize?

MRS. VAUTELET: I think the consumers are sinning to a certain degree, a little bit, without realizing the pressure they are bringing upon the local outlets. But on the other hand the local outlets have certainly erred in being too numerous for the markets in some cases they can feed from.

THE CHAIRMAN: Thank you, Madam Vautelet.

---Luncheon adjournment

---Upon resuming at 2:30 p.m.

REPRESENTATIONS:

Canadian Federation of Agriculture
Represented by:
Mr. E. C. Hope, Economist

THE CHAIRMAN: The first brief this afternoon, I believe, is to be presented on behalf of the Canadian Federation of Agriculture. Do you represent the Federation, Mr. Hope?

MR. HOPE: Yes.

THE CHAIRMAN: Then we had better have your full name.

MR. HOPE: Ernest C. Hope, Economist for the Canadian Federation of Agriculture.

THE CHAIRMAN: Then, you may either read your brief through, or read it and make comments as you go along, whichever you wish.

MR. HOPE: I shall read the brief, and perhaps make a few comments from time to time. It is as follows:

The statement which we have prepared for your consideration today is not a lengthy one. Its main purpose is to reaffirm a position which we have taken twice previously in an official way. We refer to the submission which the Canadian Federation of Agriculture made before the Special Committee to Study Combines Legislation, in 1950, and the more extensive submission made at the

Joint House Committee hearings on the legislation to outlaw resale price maintenance.

It is apparent from an inspection of the submissions already made to you on the subject of loss leader selling that they represent for the most part a renewed attack on the law which prohibits resale price maintenance. We have examined most of the briefs which have been presented to you in the course of these hearings, and the transcripts of the hearings themselves, and this is, broadly speaking, the conclusion to which we have come.

In reading these transcripts, no one can help but be struck by the great complexity of present-day commercial trade practice. It would be a brave person who would claim that there are no cases of cut-rate selling which damage some legitimate and efficient businesses with, at the same time, no great or permanent advantage accruing to the consumer. Yet it is the very complexity of the problem which would make it extremely dangerous, in our opinion, to attempt to legislate against what is known as loss leader selling.

In the course of these hearings---

I might say that this short brief confines itself pretty closely to loss leader selling, and does not go into all the ramifications of the other types of business practice, such as false advertising, misrepresentation and so on. At the time we saw your terms of reference we perhaps took a rather narrow view of them. Then, to continue:

In the course of these hearings, we feel, no arguments or points of view have been brought out which are essentially different from those expressed at the time of the hearings on resale price maintenance. Moreover, it is a striking fact that those opposing loss leader selling before this Commission have been unsuccessful in clearly and satisfactorily defining what a loss leader is. The main conclusions of these opposing witnesses appear to be:

1. That the operation of the law prohibiting resale price maintenance has resulted in "confusing" the minds of the public with respect to what is a proper price for certain types of branded goods, and has brought about a serious loss of business for small retailers of certain lines of merchandise.
2. That the elimination of small retailers due to the banning of

resale price maintenance will eventually bring about a monopoly in the retailing of certain branded goods.

And that, of course, would be detrimental to the public.

3. That "confusion" in the mind of the public reduces sales and brings on unemployment.

First may we say that we are extremely sceptical of the claim that varying prices for branded goods confuse the minds of the public and result in delayed purchases and reduced sales. On the contrary, if any confusion has been present it has been in the minds of retailers rather than of consumers. Many of the retailers had to face a new way of doing business and some for a time were like a ship without a rudder. They had been protected so long against competition that they hardly knew how to operate under truly competitive conditions.

The general public was familiar for many years with the fixed prices and high mark-ups demanded by the retail trade for branded goods. Many were unaware that this practice was made illegal in December of 1951.

I think that is a fair statement to make. The

vast majority of people who just skim over the newspapers--and perhaps that would mean a majority of consumers--did not know, I do not believe, that in December of 1951 the courts then banned resale price maintenance. Therefore, it was new to them to see these prices start to be cut in different places. I continue:

Therefore for a few months, possibly a year, the public might have been surprised but certainly not confused with their new freedom from the restrictive practice. They were certainly surprised and eventually happy to see competition restored in the retail business.

We venture to suggest that if resale price maintenance were to be made legal again, even in the guise and with the excuse of controlling loss leader selling, that the general public would not take kindly to the curtailment of their freedom to purchase at those stores which offer efficient retailing service at the lowest cost to the consumer.

We are not able to see any evidence in the official published figures that sales of cigarettes, radios, television sets, refrigerators and washing machines have fallen off because of the ban on resale price maintenance. In fact the data tend, if anything, to support the

opposite view, that sales have reached higher levels. The following table shows the estimated domestic sales of the above products since 1948.

Table 1.

Domestic Shipments and Imports of Certain
Types of Home Appliances

(thousands)

	<u>Radios</u>	
	<u>Domestic Shipments</u>	<u>Imports</u>
1948	49.5	0.2
1949	60.4	4.5
1950	63.2	3.9
1951	47.9	4.7
1952	47.4	6.9
1953	51.7	4.9

	<u>Televisions</u>	
	<u>Domestic Shipments</u>	<u>Imports</u>
1948	-	
1949	-	
1950	2.5	
1951	3.3	
1952	11.4	
1953	30.5	

	<u>Total</u>
1948	49.7
1949	64.9
1950	69.6
1951	55.9
1952	65.7
1953	87.1

Refrigerators

	<u>Domestic Shipments</u>	<u>Imports</u>	<u>Total</u>
1948	11.6	0.1	11.7
1949	14.7	0.1	14.8
1950	28.9	0.9	29.8
1951	19.5	9.1	28.6
1952	20.5	16.9	37.4
1953	22.4	18.3	40.7

Washing Machines

	<u>Domestic Shipments</u>	<u>Imports</u>	<u>Total</u>
1948	26.8	.1	26.9
1949	28.6	.0	28.6
1950	23.9	.1	24.0
1951	18.4	.4	18.8
1952	21.2	1.1	22.3
1953	20.3	2.4	22.7

Table 2.Cigarettes Released for Consumption in Canada
(millions)

1948	1,321
1949	1,403
1950	1,431
1951	1,306
1952	1,487
1953	1,750

Sales (domestic shipments plus imports)
of radios and television sets increased very

substantially in 1953 over 1952. The same applies to refrigerators and cigarettes. Sales of washing machines have been stable for the past two years.

Washing machines were a device which came on the market long before refrigerators. The satiation of the market for washing machines in the postwar period was reached sooner than it was for other products. Then, the brief continues:

If retail mark-ups have been reduced on the average for many branded goods, and retail prices are consequently lower than they would otherwise have been, it is inconceivable that sales have fallen off on this account. Such an argument runs counter to the fundamental principles of supply and demand which are part of the practical experience of all buyers and sellers of goods.

If for example the sales of small retailers for certain electric appliances, cigarettes and bread have tended to fall since price maintenance was banned, it is very obvious that some of their business in these lines must have shifted to the larger dealers. This is so because as we have shown there is no evidence that sales of such products have declined.
per capita
We know that the/consumption of bread is not

falling. Then, to continue:

It may well be that a new system or pattern of retail marketing is developing which is based on large volume and low mark-up for many goods which previously were handled by many relatively small dealers with low volume and high mark-up. If this pattern should continue to develop we feel that it will result in a wider distribution of many goods at lower prices than would be the case under the older methods of retailing. In the long run we believe this will be a gain for consumers and result in a larger volume of production and employment.

We can see nothing to support the claim of many smaller dealers with high mark-ups and fixed prices that a fewer number of large dealers with low mark-ups and fluctuating prices means a turn away from competition to monopoly. On the contrary, the banning of price maintenance is a move away from lack of competition and private price fixing to a freer market and competition. The grocery chains and large mail order houses have been with us a long time. Competition between chain grocery stores and between the few mail order houses is very active and very keen with no suggestion of monopoly that

we can see. We place no faith in the argument that the banning of resale price maintenance is going to foster monopolies or combines.

And although we use the expression there "price maintenance" and refer to the banning of price maintenance, as fostering monopolies and combines, the same would apply to loss leaders, that the odd loss leader occurring here and there, as in the case of cigarettes in a large store, even if it does result in the closing down of a few small businesses, it still does not mean that it will eventually put the consumer in the position of dealing with monopolies. Because these large organizations, so far, have continued to compete with one another, and we see no reason why that stand should not be the same in other types of stores. If you have a number of larger appliance stores in the city selling appliances, and a very few small dealers, we see no suggestion whatever that that will mean that the consumer will have to pay higher prices eventually--with four or five large concerns selling appliances. We have not done that in the case of chain stores or of department stores. Then, to continue with the conclusions in my brief:

CONCLUSION

We feel at this time that we cannot

do better than repeat in summary form our reasons for our opposition to resale price maintenance as they were presented to the Joint House Committee two years ago, namely:

1. It restricts or eliminates competition at the wholesale, and particularly the retail, level of a wide range of goods, and so increases costs to the ultimate consumer.
2. It operates within private "laws" with no appeal to established courts of justice, and is all too often enforced by threats and fear of denial of supplies.
3. It results in excessive, unnecessary and wasteful advertising and fancy services.
4. Its logical consequence is the extension of vertical private price fixing into the broader field of horizontal private price fixing; in other words it fosters combines.
5. Supported by imperfect competition or semi-monopolistic competition of manufacturers it is one of the more important causes of inflexible prices of many manufactured goods

which hinder automatic adjustments in the economic system.

Agriculture is one of the industries which suffered a great deal from the inflexibility of the price system--and that is probably true much more today than it was 30 or 40 years ago, the reasons being that a much higher percentage of the farmer's costs today is what we call cash costs.

Now he is a mechanized farmer, where he has to buy parts and services, gasoline, oil and repairs. He has got away from horse farming, which means that a greater amount of his costs falls into the inflexible category. And, therefore, anything that tends to increase the inflexibility of those costs makes it more difficult for him to operate. And in time that inflexibility will result in a very sharp fall in the price of the products of the farm.

THE CHAIRMAN: What you mean by referring to farmers' costs, and stating that so many of his operations have become inflexible, is that they are relatively inflexible, as compared with the prices which the farmer receives for his produce?

MR. HOPE: In some cases they are completely inflexible. Gasoline, for instance, is one thing.

THE CHAIRMAN: But gasoline does vary a little bit in price?

MR. HOPE: It may vary a cent, over a time. And, of course, farm machinery prices vary extremely little, very little. Repair parts for machinery vary probably not at all--even less than the machine itself. His hardware costs are very inflexible; there is very slight flexibility in them. And his fertilizer costs are relatively inflexible, per ton. He can try to curtail by buying less fertilizer, but invariably it would result in smaller crops. The farmers today are much greater consumers of fertilizers than they were 20 years ago.

Therefore, what we are trying to point out is that we feel that price maintenance tends to maintain the cost structure of agriculture more than if there were not so much price maintenance.

It is true that, so far as price maintenance is concerned, there has been a ban on fertilizer for two years, and fertilizer prices are still uniform. You can get four or five catalogues on prices from four or five firms, and you will probably see identically the same prices, right to the cent, on all those kinds. Then, to continue with the brief:

In our opinion so-called loss-leader selling in the vast majority of cases is simply a case of selling at a low mark-up and it is very doubtful if it could be proved that actual losses were being suffered by the sellers.

Moreover even extreme cases of this type of selling rarely are of long duration and in the long run are of doubtful value to the firm.

I do not think we can necessarily prove that in the long run they are of great value to the firm who practises them, because if it practises them repeatedly, the consumer gets wise to it in the end that they are pulling something to get him into the store. I am not so sure that in the long run it is of as much value to the firm as some other good practices. For instance, you go into a chain store because of a little lower margin, possibly, not as much as for the cigarettes. I am a heavy smoker of cigarettes myself, and I doubt if I ever bought half a dozen packages of cigarettes in my life in a chain store. My wife buys groceries once a week in a chain store in Ottawa. We live 20 miles away from town. I don't know whether she ever buys a carton of cigarettes. If she does, then she must hide them in the bedroom, because I never see them.

In other words, I buy my cigarettes in an ordinary store--sometimes in a tobacco store, or a restaurant. I do not make any conscious effort to go down to a chain store just to get cigarettes. I said to her one day, "The cigarette people are saying that the chain stores are loss leadering cigarettes in the

chain stores, and selling them two or three cents cheaper than the other stores." Well, she is a consumer, and she said, "I do not call that loss leadering, at all. It has been a standard price in Ottawa for some time now. The chains are not specializing in cigarettes. They are just there, and you take them. I cannot see any special feature in that to try to draw you into the store."

That is the attitude I take. There just happens to be two prices in Ottawa. One is lower than the other. But I do not go in to get cigarettes there; I go to get groceries there. Then, to complete the brief:

As no one seems to be able to define in exact and practical form so-called loss-leader selling, and because we do not believe this practice is a significant factor in retail business as a whole, we are strongly opposed to any suggestion that the ban on resale price maintenance should be removed or amended in any manner which would weaken it.

That is all I have to say. I will be glad to answer any questions which you may wish to ask, on anything I have not touched upon.

THE CHAIRMAN: Thank you. There may be some questions.

MR. WICKWIRE: I have a few questions. Doctor Hope, would you, for my benefit and for

that of the Commission, tell us something about the organization and the constitution of the organization which you represent, the Canadian Federation of Agriculture.

MR. HOPE: The Canadian Federation of Agriculture, formed about 1935, is a federation of provincial federations of agriculture. It is a federated body. We do not have direct membership in the national federation. We have a federation of agriculture in practically every province except Quebec. There is the British Columbia Federation of Agriculture, the Nova Scotia Federation of Agriculture, and so on. In the Province of Quebec we do not have a Quebec federation, but we have three large farm organizations which have direct membership in the national office. One is the co-operative, the other is the Catholic Union, and the other is the Farm Forum of Quebec. Each provincial federation, in turn, is made up of federated bodies. Only one provincial federation has a direct membership in its own membership, and that is the Ontario federation.

And the others--for instance, in British Columbia, the member bodies of the British Columbia federation would be the Okanagan Fruit Growers, the Fraser Valley Milk Producers, the British Columbia Livestock Growers Association, and a number of other farm organizations. They are federated members

of the provincial bodies and then, in turn, these provincial bodies are members of our national body.

MR. WICKWIRE: Can it be said that your organization speaks for all the primary agricultural producers in Canada?

MR. HOPE: We speak, through our membership, for 450,000 farmers, we estimate. There are, I believe, 740,000 farmers in Canada, according to the most recent estimate. And we claim that we represent directly at least 450,000 of them.

MR. WICKWIRE: In every province?

MR. HOPE: Yes, in every province. I might say that our board of directors--that we have our annual meeting, and our semi-annual meeting, both. And this particular aspect here was under discussion at our semi-annual meeting of the board of directors at Amherst last July. It was from there we got our directive to put forward the views which we have expressed here. It was not done just from the national office. The board of directors gave us the power to put this forward as we have presented it here.

MR. WICKWIRE: After discussion?

MR. HOPE: Yes, after discussion last summer in July.

MR. WICKWIRE: Then, on page two of your brief, the second to last paragraph, and the first paragraph on page three--has it been

your experience that you cannot stop the public from looking for bargains?

MR. HOPE: That is right; you cannot stop the public from looking for bargains. They want to look for bargains.

MR. WICKWIRE: You cannot legislate against that?

MR. HOPE: No.

MR. WICKWIRE: Then, the table on page 3--would you mind telling me the source of the figures given for radios, television sets, refrigerators, washing machines, and also for cigarettes at the top of the page?

MR. HOPE: I must apologize for not doing that at the bottom of the table. That was a very bad error.

The figures for 1948 to 1952, the annual figures, came from the publication by D.B.S. called the annual supplement to the statistical review. And then the figures for 1953 were taken out of the monthly statistical review of the D.B.S., the monthly figures.

MR. WICKWIRE: So that in all cases the statistics quoted came from the Dominion Bureau of Statistics?

MR. HOPE: Yes.

MR. WICKWIRE: On page five, the paragraph before your conclusion, do you visualize in the marketing or merchandising of produce today that there are perhaps two

types, one known as volume stores with a low mark-up, and the other the service stores, so-called, with the emphasis upon service of the articles which they sell to the public, and that there might be a price differential in the two groups?

MR. HOPE: That is something, sir, with which I am not entirely familiar. I gathered from the evidence and the briefs that there are these two types of prices where they claim now that, when you buy an article, a certain branded article, which might get into disrepair, that the large-scale store selling at a cut-rate price gives little or no service. I gathered that, and also I gathered that the other store, the higher-priced store, gives service.

I never experienced that. I know this, though, that I have talked to many people who have bought appliances, and from one who has bought farm machinery, and they are supposed to service farm machinery, sometimes, free, or to give it service for a certain length of time. But certainly, in the field of farm machinery, there is absolutely nothing that is guaranteed.

MR. WICKWIRE: By the manufacturer?

MR. HOPE: Yes. I bought a combine last year, from John Deere. I never saw any document about any guarantee. I repeat that

I never saw any document about any guarantee with respect to breakage or faulty workmanship that first year of operation.

Then, a cylinder on the combine broke up toward the end of the season. A cylinder costs \$125. It did not pick up a stone. I complained to the dealer, and he charged me for the full amount. There was \$25 for labour, to come down and fix it, and \$125 for the parts. I told him I thought it was a defective cylinder. "Well," he said, "it all depends what the company will say." Meantime, he had billed me for \$125 for the cost of the cylinder. I refused to pay it. I said it was defective, and that we had had some trouble with it prior to that time.

The cylinder had a number of bars in it. We had replaced one of the bars earlier in the season. It had warped. Then, finally, it blew up.

So this went on all winter and, finally, he was able to come back and rebate to me half of the price of the cylinder. However, it looked funny to me, and still I would not pay the balance. So I went after him again, and I did not pay the bill all winter. Finally, in the spring, he gave me a full rebate and said that he was able to get it out of the company.

Now, if I had been a little bit soft

I would probably have paid all the bill. However, I have a wife and, like most women are--women are much tougher than men in these things, much more so. They are tough, let me tell you, when it comes to buying anything. And she bolstered up my courage, to say that she was sure that that should be guaranteed.

The point I am getting at is that I think the public sometimes does not know what service these companies do guarantee. So, do they really guarantee it, or how much do they guarantee? There are a lot of reports that they claim that they give full service, but probably they do not.

MR. WICKWIRE: There has been great emphasis placed by some organizations presenting briefs before this Commission on the service to which the public is entitled or the customer is entitled, when they buy, for instance, an appliance. Do you say that in the farm machinery field that is not so?

MR. HOPE: It is very loose and difficult to find out. Certainly on some machines it is not true at all.

THE CHAIRMAN: Well, even with regard to the case you have just given us, in your instance you related, you cannot say even now, so far as your evidence given to us today, whether or not that combine was guaranteed, can you? All you know is that, after a great

deal of fighting extending over a long time, they gave you back your money?

MR. HOPE: That is right.

THE CHAIRMAN: And there may have been other reasons over and above the fact that they felt there was a legal obligation?

MR. HOPE: Yes, if it were a straight obligation you would suspect that when they sold you the combine they would give you a piece of paper outlining their guarantee for the first season of work.

Now, I did not get that and I do not believe you get it, either, when you buy a new tractor. I have bought three new tractors, and I never have had a sheet like that.

And, to talk some more about the point you mentioned, I often have wondered myself, when they talk in these hearings about how much service they give, if they were examined and asked, "Just what do you give; what guarantee do you give?"--what their answer would be. They should be asked, "Do you pay the labour?" "If you do not pay for the labour, who pays for the labour"--and all those things. They could be asked, "Do you just give free labour, and do you make the customer pay for the parts?"

I do suggest that it is not a uniform practice, and that it varies a great

deal. I think perhaps they are building up a far bigger story than what it really is.

Maybe the service does vary a great deal from company to company.

MR. WICKWIRE: I think that is so.

MR. HOPE: I do not know how much, of course. But I sort of think it is just a big story, but that actually it is not as big as it should be.

MR. WICKWIRE: Do you think perhaps some of the extra cost is concealed in the talk about service?

MR. HOPE: Oh, I feel that it is. For instance, we have a refrigerator, and we have had it for a long time--no, I mean a washing machine; I think it was a Coffield. The chap said, "Well, we don't handle these parts. You will have to go away down to Rideau Street to a fellow in a little back lane. He does all the servicing of washing machines for the whole of Ottawa now." And you go all the way down there and you pay him for everything--all the parts, all the work--you pay for everything. It is a little place down near Rideau Street, one of the back streets down there.

MR. WICKWIRE: The machine you speak about is obviously over the period of the guarantee?

MR. HOPE: Yes, it was bought some

years ago. But I did buy a new machine from a dealer in North Gower about three years ago.

MR. WICKWIRE: Yes?

MR. HOPE: And I do not believe I got any service on that machine at any time. We asked about it, but we never had any decision on the point. He was a little dealer in North Gower, out there--a friend of mine, and I did not press the point. I never got any notices that there was any service given there.

MR. WICKWIRE: Doctor Hope, some witnesses before the Commission have stated that loss leader selling, by which they often mean selling at a low mark-up on laid-down cost is unfavourable to the interests of the primary producers, such as you represent. The argument is stated after this fashion: that a single retailer cuts the price on, we will say, cheese. Then he uses it as a loss leader. The other retailers would similarly reduce their selling price on the same article. The result would be a demand for a lower buying price by the retailers, with the further result that the prices to the primary producers would suffer. What is your view on this argument?

MR. HOPE: First I would say (a) that I never have really heard any organized, we will say--any organized group of farmers use that argument. I do not think I have ever heard

it used as an argument.

MR. WICKWIRE: Organized, or otherwise.

MR. HOPE: Yes--any body of farmers. I never have heard any body of farmers make that argument. That is the first thing.

Then, secondly, my feeling is that there is a counteracting force on what you gentlemen say, there. Because if you are going to drop the price of a product like cheese, and make it more acceptable to the consumer, then you are going to increase the demand for that product. And if you increase the demand for the product, then I believe that offsets any suggestion--well, they would sell more cheese, in other words, the group of them--not just the one who did it, but probably everybody would.

I suspect that would offset the demand--at least increase the demand for cheese, which would offset any suggestion of a demand for a lower price for cheese. So I do not think it would be a very significant factor at all.

MR. WICKWIRE: So far as the primary producers are concerned?

MR. HOPE: That is right.

THE CHAIRMAN: You have just been giving some expressions of opinion which would be opinion as to the economics of the situation.

While you are here, as spokesman for the Canadian Federation of Agriculture, and presenting a brief, perhaps your own personal views as an economist might enter into the picture sometimes. In those circumstances it might be well if you would give us your own background in economics. Do you have a degree from some university.

MR. HOPE: I received my Bachelor of Agriculture degree in animal husbandry originally from British Columbia, in 1924. Then, five years later I received my Master's degree from Cornell University in agriculture, economics and farm management. That was in 1929. Then, in 1936, I think it was, I received my Ph.D. from Cornell in agriculture and economics. Between those periods, when I was going to university I taught one year on the economics staff of Guelph. Then I was 14 years on the staff of the College of Agriculture of the University of Saskatchewan. Then, for four years I was economics adviser for Mr. Bracken, on agriculture, when he was Leader of the Opposition. Then, for the last six years I was with the Canadian Federation of Agriculture.

I have owned and operated a farm, and I now live on a farm out at North Gower, Manotick, and have done since 1945.

MR. WICKWIRE: That is all.

MR. HOPE: I might make one slight comment, if I may. I do not know whether I

should raise this point or not, but occasionally reference has been made in some of these briefs to the fact that because agriculture has price support and, as it were, because it has a guaranteed income, that therefore it is logical to say that retailers should be protected by being allowed to have resale price maintenance.

Well, we took that argument up when we presented our brief to the Senate Committee. We think that the two things, price floor legislation in agriculture and resale price maintenance, are just like the poles, they are so far apart. That is, we do not believe that the retailer, if he really knew how price floor legislation operates, would be very happy with it.

I know of only one case in one year when the federal government's price support operation supported the price of farm products, you might say, at a so-called reasonable level, and that was in 1952 at the time of the foot and mouth disease epidemic, which was a national catastrophe. At that time the price support put on hogs and cattle was probably enough to maintain the production of farm products for that year.

But at all other times, price support levels have been fixed away below any computation of the cost of production for the industry as a whole.

An example today is hogs. Price support levels for hogs of \$23 per 100 pounds, Grade A, if it touches that point this fall, will be away below the cost of production for hogs. If it touches that level it will cause a sharp contraction. It will not be fixed at anywhere near the level of what these people have been seeking--at least, the level as set by price maintenance operations--which obviously are set at a level which will maintain many people in business, and very often in high-cost business.

Last year we had another operation in connection with Prince Edward Island potatoes. It did not come under the price support legislation, but came under the co-operative marketing. The government guaranteed 45 cents a bushel to the banks--that is all. It was a guarantee to the banks--really a guarantee on a bank loan on the basis of 45 cents a bushel.

Well, that price was away below any possibility of the cost of production figure for the Province of Prince Edward Island last year. And the same applied when cheese was supported last year at 26 cents. It never did hit that price. It was always above that.

So, therefore, I think that the farmer, although he does have some measure of protection through the operation of the Prices Support Board, it is really in the nature of a stop loss,

and it is not in any sense a price which guarantees the farmer a cost of production figure, or a profit.

THE CHAIRMAN: Thank you, Mr. Hope. I believe that completes the questioning, and also the discussion on your brief, unless you have anything further to add.

---Recess

--O--

---Upon resuming

REPRESENTATIONS:

Retail Merchants Association of
Canada (Saskatchewan) Inc.,
-and-

The National Foods Division of the
Retail Merchants Association
of Canada, Inc.:

Represented by:

Mr. A. A. Shelly.

And accompanying Mr. Shelly, in the
presentation of the brief:

Mr. F.A.B. Rands, National
Secretary of the Retail
Merchants Association of
Canada, Inc.; National
Secretary of the National
Foods Division of the
Retail Merchants Association
of Canada, Inc.

THE CHAIRMAN: I believe we are now
to have a brief presented on behalf of the
Retail Merchants Association of Canada
(Saskatchewan). Mr. Shelly, do you wish to
speak now?

MR. SHELLEY: Mr. Chairman and gentlemen,
before starting in on the reading of the brief, I
should like just to make a few preliminary remarks,
particularly by reason of the fact that on Tuesday
there was a presentation made here on behalf of
the Retail Merchants Association of Canada. I
think that, particularly, in the minds of the
press, there may be some confusion--unless I try
to clarify it at the outset.

So I wish to say that I am appearing

here as spokesman for the Saskatchewan Retail Merchants Association, and for the National Foods Division of the Retail Merchants Association.

By the way, I have presented signed copies of the brief. They are on your desks, and they have all that information right on the face of them. The National Foods Division of the Retail Merchants Association of Canada is self-autonomous, and likewise is the Saskatchewan provincial Association.

I should like to go back for a moment to the very beginning as to how I got started on this thing.

THE CHAIRMAN: Before you do that, Mr. Shelly, I should like to ask Mr. Rands if he is appearing with Mr. Shelly.

MR. RANDS: Yes.

MR. SHELLEY: I might say that Mr. Rands--Mr. F.A.B. Rands--is here; he serves in the dual capacity of National Secretary of the Retail Merchants Association of Canada, Inc., and likewise as National Secretary of the Foods Division of that same organization.

MR. FAVREAU: Does he appear in his dual capacity, or just in his capacity as Secretary of the Foods Division?

MR. SHELLEY: I think today we can say that he ~~appears~~ as Secretary of the Foods Division.

MR. RANDS: Yes.

THE CHAIRMAN: Because, if he is not, there would be some confusion.

MR. SHELLY: In view of what was submitted here on Tuesday, I think Mr. Rands may be in a somewhat embarrassing position. But more will be heard on that subject later.

But, particularly in view of the fact that this morning we listened here to Madam Vautelet, talking for the Canadian Association of Consumers, I should like just to go back to the very beginning for a moment, and say that so far as I am concerned this thing started off with a full-page advertisement of my firm in Saskatoon, on the 1st of May. A copy of this is on file with your Commission.

My purpose in starting off that way-- and I must say I did not know where it was leading to at that time--but I did feel that in view of the way things were happening in our marketing area that it was timely to bring this subject to the attention of the consumers. And I mention it in this sense, that my object was that of trying to work in the direction of discouraging the type of practices which destroy competition--for which perhaps the term "loss leader selling" is an over-simplification.

Now, not many days after that advertisement appeared in our local press, I

received a telephone call from the Canadian Association of Consumers, Saskatchewan Division, asking me to speak to their group at their annual meeting which, by coincidence, happened to come along very shortly. So I spoke to them; but that was before I had an opportunity of presenting the brief to the Commission at Saskatoon, and, therefore, I was not able to divulge to them the formula that I had in mind. I spoke largely in terms of deceptive practices.

A few days after I had spoken to the Canadian Association of Consumers I received a telephone call from the Provincial Secretary of the Retail Merchants Association, a Mr. R. E. Walker, asking me to prepare a ^{brief for} presentation to the Commission on behalf of that Saskatchewan Association, which I agreed to do.

Then shortly after that--very shortly after, in fact--I received a letter--and all these things happened spontaneously--I received a letter from the Dominion President of the Retail Merchants Association of Canada, inviting me to go to Edmonton in late June and to explain the formula which I had in mind to the National Foods Division of that Association, and to the Dominion Board of that Association.

So I went to Edmonton on the invitation received and I explained the formula. There were delegates there from all the provincial Associations, each of which, by the

way, is self-autonomous, with the exception of British Columbia. And as far as British Columbia is concerned, it is not self-autonomous through an oversight. And I think they are going to correct that situation--is that not right, Mr. Rands?

MR. RANDS: Yes.

MR. SHELLY: In any event, there were the accredited delegates from the provinces representing food retailers of those provincial associations. And a committee was appointed to deal with this subject. I explained this formula to them, and they approved of it. And on their recommendation I got in touch, by long distance telephone, with Mr. R. E. Walker in Saskatoon and secured his permission for having the National Foods Division join with Saskatchewan so that it would become a joint presentation on June 29 at Saskatoon.

Then, without any solicitation on my part, the Dominion Board of the Retail Merchants Association, at their annual meeting in Edmonton, endorsed the brief which was before them in its final form.

I think it is rather important to give that explanation here, in view of the fact that on Tuesday there was a presentation made here to the Commission purportedly speaking on behalf of the food retailers, who are members of this very same provincial association.

I would like to cover one more point on this. I have here a page taken from the Manitoba Retailer, and I will file it with you. This is the issue of July-August, dated at Winnipeg, and put out by the Manitoba Retail Merchants Association, of which Mr. David Gilbert is the President, the Provincial President, and that same Mr. David Gilbert, at that mentioned Edmonton annual meeting, became President of the Dominion Board of the Retail Merchants Association.

Now, this was printed subsequent to the Saskatoon meeting, and I will just read the first paragraph of an article here. The heading, by the way, is Ban Cut-rate Food Sales, and it is followed by a question mark. Then there is the subheading, Here Is One Suggestion by R.M.A. National Association:

A formula to prevent loss leadering, described as a deceptive device repulsive to fair-minded retailers, is outlined in a brief presented this week to the Restrictive Trade Practices Commission sitting in Saskatoon. The plan was detailed in a submission from the Saskatchewan Retail Merchants Association, jointly with the Retail Merchants Association of Canada. It applies to food merchandising--

and then it goes on to set out a digest, which I shall not bother reading just now.

I wish to say, next, that I spent Sunday afternoon in Winnipeg with Mr. M. D. Grant, who is the National President of the National Foods Division of the Retail Merchants Association. Mr. Grant that afternoon was in touch by telephone with Mr. David Gilbert and requested of Mr. Gilbert that the submission that was to be made here by Mr. Keith, as arranged for by Mr. Gilbert, was not to deal with foods. I was with Mr. Grant from the time that Mr. Gilbert and Mr. Keith boarded the train for Ottawa. I flew east on Monday. So I am saying that to indicate that there is no misunderstanding there at all.

Now, yesterday I was in touch by long distance telephone with Mr. Grant, who intended coming here to be present, backing this submission I am presenting here today. Certain business matters had arisen which made it impossible for him to come, but he advised me that arrangements were being made to have Mr. L. B. Brault of Cowansville, Quebec, Past President of the National Foods Division of the Retail Merchants Association, to be here, and to take his place. Mr. Brault was present at the time of the annual meeting in Edmonton, and that is where Mr. Grant was elected the new President. So Mr. Brault, I understand, will appear here tomorrow. I was just speaking to

him about three-quarters of an hour ago, and he has just returned home from having attended the provincial annual convention of the Retail Merchants Association of Quebec. He just got home about seven o'clock this morning, and he is on his way right now to Ottawa. I hope he may have the opportunity of clarifying this jurisdictional issue here tomorrow morning, Mr. Chairman.

In regard to the Saskatoon brief, I would like to say this, that Mr. Rands, here, had 5,000 copies of it printed and mailed out across Canada. A copy went to every Member of Parliament, and to every trade paper, and a copy went to 3,500 key food retailers across Canada. Those retailers had their representation at Edmonton as a result of their accredited delegates to the annual meeting at Edmonton. But Mr. Rands mentioned to me only today that not one objection had been received from those 3,500 key food retailers across Canada, who had received this proposal which was submitted on their behalf at Saskatoon.

Now, this second brief I am presenting here today has no new principle in it. It is merely a brief supporting the submission of June 29.

I shall now, with your permission, start right in to present the text of this brief. It is as follows:

When it was my privilege to submit a brief to the Commission on June 29 at Saskatoon I served as spokesman for the Retail Merchants Association (Saskatchewan) Incorporated and the National Foods Division, The Retail Merchants Association of Canada Incorporated, each of which divisions is self-autonomous. Today again I serve as spokesman for these same two divisions.

In the course of the Saskatoon hearing I was questioned for several hours concerning the intended effect and the likely implications of the different provisions contained in the formula which we recommend for enactment into federal law. As indicated at the time, there is nothing in this proposal that is prejudicial to the interests of either the primary producer or the ultimate consumer.

That opinion was confirmed here this morning by Madam Vautelet. Then, to continue:

Yet this measure would serve as a strong deterrent to the use by retailers of certain widely prevalent deceptive practices for which the term "loss-leader-selling" is an over-simplification.

Since the time of the hearing at Saskatoon the Commission has received a number of additional submissions from

other sources and so we felt that it might be helpful to the Commission if we could appear a second time so that, in the light of the over-all submissions to date, the value of our proposal might be further assessed. We are deeply grateful to the Commission for the opportunity to appear a second time.

Specifically, our purpose in appearing now is -

- (a) To provide additional background information concerning the purpose of clause 6 of our formula which is headed up "Short Supply Items" and also concerning clause 7 which is headed up "Market Advance".
- (b) To comment on some aspects of submissions made to the Commission by others.
- (c) To emphasize the urgent need for the type of legislation as represented by our formula.
- (d) To impress upon the Commission that of all the proposals submitted so far we believe ours to be the only one which would not be prejudicial to the interests of some classification or other, when thinking of primary producers, processors, manufacturers, wholesalers, retailers and last but by no means least, of the ultimate consumer.

- (e) To urge the Commission to explore with a joint committee of appointees:
- from the Canadian Association of Consumers and
 - from the sponsors of this brief
- any and every emerging question concerning our proposed formula prior to the finalizing of the Commission Report which is to serve as guide to the Government.

Before proceeding further I wish to record that here, as at Saskatoon, I speak on behalf of the so-called food store field of items, in its broadest sense. At Saskatoon the Commission expressed keen interest in the question of whether other classifications of trade might wish to have our formula adapted to their trades. By now it is evident that certain other trades are impressed with the merits of this formula and I think it is a foregone conclusion that in due course certain other trades will desire a similar measure as a solution to their problem.

I might add that Mr. Rands has had a request from the Canadian Pharmaceutical Association for quite a number of copies of the brief, which have been supplied, and a copy of our brief was sent to their executive across Canada--to each member of the executive. And they are having their

annual meeting later this month, I believe.

MR. RANDS: It is now on, or just over.

MR. SHELLY: Yes, it is in progress now. They are going to study this proposal for adaptation to their trade. Then, too, the Canadian Radio, TV and Appliances Dealers Association likewise are actively studying adaptation of this plan to their trade.

Then, I have a number of subheadings, and I shall refer to them as I go along with this brief. I continue:

CANADIAN METHODS OFTEN EXCEL:

As is well known to members of the Commission, some of the ladies now prominent in the Canadian Association of Consumers organization in wartime made a very real contribution to the welfare of Canada by assisting with the evolving of suitable regulations both in regard to price controls and the equitable distribution of goods in short supply. These ladies carried the responsibilities of the so-called "consumer division" of the Wartime Prices and Trade Board. During that period I was invited to Ottawa as one of the so-called dollar-a-year-men and so, for a couple of years, I had the opportunity to co-operate with the different divisions

of the Board in drafting regulations which would as effectively as possible control prices and regulate equitable distribution of goods in short supply. I served in the capacity of Retail and Wholesale Food Director, which was a national position embracing the entire food field in so far as it had to do with retail and wholesale mark-ups and equitable distribution of goods in short supply. It was our purpose to issue the simplest possible regulations regulations which would be effective in their purpose without imposing avoidable hardships or obstacles upon the trade. Comments frequently were heard from international visitors to the effect that Canadian regulations were extremely simple by comparison with corresponding regulations of other countries. Chairman Donald Gordon saw to it that red tape remained conspicuous by its absence. I relate this background to indicate that in seeking a solution to the so-called loss leader problem Canada is capable of doing better than merely to copy measures employed elsewhere.... which measures incidentally are anything but popular with the consumer body, fall far short of accomplishing their intended purpose and produce unintended undesirable by-products.

THIS PARADOX NOT NEW

I would like to draw upon an interesting parallel as between the current issue and one encountered in wartime. The point is simply this --- that some things do not lend themselves to DEFINITION and that therefore a solution to such a problem cannot be evolved if the condition is pre-imposed that a DEFINITION must first be provided. I realize that the Commission had hoped that somehow in the course of these proceedings there would emerge a definition of a so-called "loss leader" based on scientific findings. Today there is little hope that such a definition will be forthcoming.

When I accepted my Wartime Prices and Trade Board assignment in 1943 I found that certain price distortions had been regrettably perpetuated simply because no one thus far had succeeded in defining what was commonly referred to as a "direct buying retailer". Let me explain what was meant by that term. Take Loblaw Stores for example; they buy directly from the primary producer, the processor or manufacturer, etc., on the same basis as a wholesaler. As a retailer they perform for themselves the same distribution function which otherwise would have to be performed by a wholesaler. They

perform this function in addition to the normal retail function. Now, Wartime Prices and Trade Board orders provided specified retail mark-ups for retailers and specified wholesale mark-ups for wholesalers. But Loblaws and other such direct buying retailers found themselves in a very unreal position because these W.P.T.B. retail mark-ups made no allowance for the fact that such direct buying retailers were up against the cost of performing both the wholesale and the retail functions. Now normally the wholesale function requires roughly half the mark-up required by the retail function, but since a direct buying retailer operates more economically than the typical combination of wholesaler-retailer it was obvious that the direct buying retailer required a mark-up somewhere in between the typical retail and the combined retail-wholesale mark-up. But no provision had been made for such an in-between mark-up because no one had succeeded in defining a direct buying retailer, for the simple reason that some retailers perhaps bought 100 per cent of their requirements from the direct source on the same basis as a wholesaler, some others due to volume limitation, etc., perhaps 50 or 75 per cent, others again

perhaps as little as 25 or 10 per cent. Some of them maintained separate warehouses for the performing of the distribution function, but even some large operators like Eaton's food departments did not necessarily maintain a separate warehouse. So, because a definition was seemingly impossible, direct buying retailers had for a considerable time been in a rather unreal position and some of them had discovered that they could relieve their plight by having their stores supplied, in part at least, by a wholesaler instead of buying direct. In so doing they relieved themselves of the cost of performing the whole-sale function, but of course at the expense of a higher price, which then could legally be passed along to the consumer. So, neither the interests of efficient retail operators nor those of consumers were served by this conundrum.

NON-FOOD FIELDS SOON ADOPTED FOOD FIELD
FORMULA

I had been preceded in my W.P.T.B. position firstly by a key man from the Safeway organization, next by a key man from the Dominion Stores organization and lastly by a prominent wholesale grocer, none of whom had succeeded in finding the solution to this problem, simply because they could

not define a direct buying retailer. I had not been there long before advancing the proposal that in case of such W.P.T.B. orders an appropriate in-between mark-up should be provided which would apply in the case of each and every direct purchase that was made by any retailer provided that the cost price was the same as would have applied to a wholesaler making the same purchase. It was just as simple as that. There was no occasion to define a direct buying retailer. We were not interested in whether a given retailer purchased 5 per cent or 95 per cent of his merchandise on a direct basis....any and every time any retailer did make a purchase on that basis he qualified for the direct buyer mark-up because in that case he was performing the dual wholesale retail function.

I kept the thing simple, just to bring out the principle. I might have gone into it more fully, as Mr. Whiteley knows, because he was with the Board at that time. I could have elaborated. But, for the purposes here, there was no need of that. There were such things as each operator being tied to his minimum basic period mark-up, and so on. But I think for the purposes here there is no point in going into those ramifications. I am merely making this point about the problem, in advance. I shall proceed now:

Now this solution cleared away some aggravating price anomalies.....obviated the necessity of buying from a wholesaler instead of buying direct, and in the end often resulted in lower prices to the consumer. While my position with the W.P.T.B. was concerned with the food field only, it did not take long for other divisions of the W.P.T.B. to adapt this direct buyer mark-up formula to their respective fields, which was largely a matter of determining the appropriate direct buyer percentage that should apply in that given case. I say these things in all modesty, Mr. Chairman, but I think I owe it to our cause to recite this experience. I could go on to explain some other formulae which I had the honour to initiate with the W.P.T.B., such as the Fractional Cents Order, the mark-up provisions governing multiple sales, the so-called consolidation of regulations under the Item-Index Markup-Table Plan, etc. However, I shall simply say that such eminent people as Mr. Donald Gordon and Mr. K. W. Taylor are familiar with the success of the different measures which I had the honour to initiate.

HAND IN HAND WITH CANADIAN ASSOCIATION OF CONSUMERS

As already inferred, in anything and everything that may be done in connection

with our proposed formula, now and throughout the future, we aim to go hand-in-hand with the Canadian Association of Consumers, so that such legislation could never become an embarrassment to the Government.

SCIENTIFIC DEFINITION IMPRACTICABLE

I would not like the Commission to think that I am trying to side-step the task of defining a LOSS LEADER. As I indicated at Saskatoon, it would have to be done scientifically. A store which prices its goods on a sound economic basis aims to apply a realizable mark-up on each different item which will exactly cover the cost of doing business that is properly attributable to that given item and which in addition will yield the desired net profit objective. If that net profit objective is 3 per cent of sales (which is a generous objective in the food field) then the aim is to apply a realizable mark-up to each given item 3 per cent in excess of the cost of doing business applicable to that item. We all know, of course, that competitive factors on the one hand and traditional pricing practices on the other hand do not, in practice, leave any retail food store in the position where it could or would price all items strictly on a scientific economic basis. It would, incidentally, present a formidable research project to establish scientifically exactly

what cost of doing business is attributable to any one given item in any one given store. And the finding, no matter how conscientiously arrived at, might be out of date the very next day.

Assuming that in a hypothetical case a retailer succeeds in pricing every item on such scientific economic basis, we would then emerge with a situation where each item contributed its 3 per cent net profit, but the mark-ups on the different items might range, for the sake of argument, from a low of say 8 per cent to a high of say 30 per cent. If two retailers side by side used such scientific yard stick in pricing their goods on an economic basis the end result, in terms of consumer prices, might still be different since one perhaps buys to better advantage than the other and undoubtedly one is more efficient than the other, so that his lower per cent cost of doing business would result in a lower average gross margin, while still yielding his 3 per cent net profit.

The food store business is ever changing and what are relatively high handling costs or high perishability losses for an item today may be reduced tomorrow by new waste reducing methods or by new techniques of handling or packaging. Consequently, mark-ups are continually changing, which is

another way of saying that any loss leader price scientifically defined today might be out of date tomorrow without any change in the invoice cost of the item.

AN HONEST DEFINITION OF BELOW COST SELLING

I suggest, Mr. Chairman, that pages 2865 to 2875, inclusive, of volume 16, Vancouver brief dated July 6, provides an honest definition of what constitutes a sale at "less than cost". On page 2874 we find that the Canadian division of this international chain in 1953 made a net profit, after taxes, of 2.9 cents for each one dollar's worth of goods sold. I quote starting with the bottom paragraph of page 2874 - "Consider the fact that the average grocery item sells for about 30 cents. That means that the company's net profit is only three-fourths of a cent on the average item. Where a selling price of 30 cents produces less than a penny profit, 29 cents would mean a virtual loss. That is, if we are selling at 30 cents and have only three-quarters of a cent profit, then if we sold at 29 cents we would have a quarter of a cent loss."

Obviously these facts are irrefutable. Let us just see how significant this is when applied to the 1953 sales volume of the Canadian division of this international

chain. To make things simple let us call the net a flat 3 per cent instead of the actual 2.9 and let us call the volume one hundred and fifty million dollars because it is very near that figure. With a 3 per cent net on a 150 million volume we would end up with a net profit of $4\frac{1}{2}$ million dollars. But had the retail price of every dollar's worth of goods sold been reduced by 4¢ there would have been a net loss of 1 per cent instead of a net profit of 3 per cent. This net loss of 1 per cent would have amounted to $1\frac{1}{2}$ million dollars. It is on the evidence of their spokesman that this would be regarded as a net loss.

AN INEFFECTIVE UNREALISTIC DEFINITION

The gross margin for the year was 14.7 per cent (which incidentally did not include the warehousing cost). To keep it simple let's call it 15 per cent. This 15 per cent of course includes the 3 per cent net profit. Now had the retail price of every dollar's worth of goods sold been reduced by 15¢ we would end up with the situation where every dollar's worth of goods would have been sold at invoice cost of these goods. In that case this 150 million dollar volume would have produced a net loss to the company of 12¢ on every dollar of sales, or in

round figures, 18 million dollars. But on page 2847 this same spokesman for this company suggests to the Commission that a sound and honest definition of a loss leader is as follows: - "A loss leader is a sale made at a price below the lower of invoice or replacement costs with the intent or purpose of injuring or destroying competition or misleading customers." Now this 18 million dollar loss resulted without selling below invoice cost ... therefore, according to this definition, the company would not have engaged in any loss leader selling. This presents a very portentous inconsistency. On the one hand this spokesman claims that if he sells at a price which is less than invoice cost plus the cost of doing business he sustains a net loss. Then, in effect, he states on page 2847 that he could reduce the selling price by the amount of the cost of doing business, by an average of 12¢ per dollar of sales, ending up with a net loss of 18 million dollars, but without being guilty of any loss leader selling. On the basis of the page 2847 loss leader definition, this company could choose deliberately to drop another 25 or 50 million dollars, over and above the mentioned 18 million, without being guilty

of loss leader selling, since no one would be likely to prove that such loss leader selling was indulged in "with the intent or purpose of injuring or destroying competition or misleading customers". Now, Mr. Chairman, can one prove someone else's thoughts ... unless that someone indiscreetly divulges his thoughts to you?

I would like to interject, as is borne out by some of the information in the Green Book on loss leader selling, that the different loss leader types of enactments in the United States run all the way from 5 to 12 per cent margins. So I think we can look upon that as, in the opinion of those authorities, constituting loss leader selling, if the price is reduced below those figures. Then, to continue with my next heading:

A REALISTIC NON-SCIENTIFIC DEFINITION

As is evident from the contents of the Green Book on Loss Leader Selling, all remedial measures enacted in different countries have been based on the premise that even if you can not define the disease - meaning a loss leader price - you can, nevertheless, spell out the remedy in terms of an arbitrary price resulting from legalized retail price maintenance or from imposition of a specified minimum mark-up. While we agree that it is impracticable to

arrive at a scientific definition of a loss leader, we believe that we can submit a non-scientific definition which should be helpful to the Commission in assessing the advisability of employing our proposed free and easy formula as a remedial measure ... a formula which at once responds to a loss leader problem under this definition ... whenever and wherever it pops up.

Let's take, as a suitable example, the Vancouver retail cigarette price of 2.95 per carton. Safeway say it is not a loss leader. We say, perhaps it isn't, to them. The cost to Safeway is 2.69 and they claim that they cover the warehousing and retail function out of this 26¢ spread and have a net profit left over. Now to the independent retailer (whether or not he is situated in Vancouver) who has to pay Safeway-MacDonalds a wholesale price for these cigarettes of 2.80, this 2.95 retail price again may or may not be a loss leader.

THE CHAIRMAN: That is, if these independent retailers, themselves, sell at \$2.95?

MR. SHELLY: Yes. And, to continue:

No doubt the independent feels that it is a loss leader in the way that it affects him. But surely, to the independent retailer who has to pay Safeway-MacDonalds a wholesale

price of 2.91 for these cigarettes, as many of them do, this Safeway retail price of 2.95 is a loss leader. Now we submit, Mr. Chairman, that here we really get down to a practical approach in appraising what in effect is a loss leader. It may not be a loss leader at the level of the first named retailer, but it undoubtedly, in effect, is a loss leader for competing retailers who in their operation may be just as efficient as the first retailer, but who are unfairly discriminated against, that is, in their cost.

MR. FAVREAU: Do you say, in substance, that a loss leader is the price at which, if met by a competitor, would make the latter incur a loss?

MR. SHELLEY: What I said before is that a price which may not, in effect, be a loss leader for the first retailer, in effect very well could be a loss leader so far as a competitor of his is concerned.

I think that is where a lot of the ambiguity about this term "loss leader" actually comes in. Very often the man to whom, in effect, a certain price of a competitor is a loss leader--very often it may not actually be a loss leader, so far as the operator is concerned who sets that low price.

THE CHAIRMAN: Should there be a remedy provided? That is the point; should there be a remedy provided?

MR. SHELLY: That is one aspect.

THE CHAIRMAN: Against the retailer who sells regularly at a mark-up producing a price which yields him a profit. Should there be legislation against that, or a ruling against that, even though other people cannot compete with him?

MR. SHELLY: I think, Mr. Chairman, that is one aspect of this whole problem that exists, and I think we have to recognize that is one aspect of it. Now, that is not answering your question.

THE CHAIRMAN: It seems to me what is involved in this paragraph, where you say that it might not be a loss leader to the retailer who first adopts the price--in other words, it might be profitable to him, but it might be a loss leader to other retailers. How is it a loss leader to other retailers? They might incur a loss, if they handled the same goods, and sold at the same price. But because of the price they have to pay for the goods, or for some other reason, the net result to them is a loss. They would suffer a loss, but I would not call it a loss leader. I would say that is a competitive loss which they suffer because they attempt to meet the price.

MR. SHELLY: Of course, as I think we see from a lot of the facts that are presented in the brief, to which I referred, the Safeway brief--I beg your pardon, I have just lost my trend of thought there for a moment--but this is the point I wish to make--and I think you will agree with this--that all of the information that has been submitted has not led us to the point where anyone can prove that the cost of doing business on a given item is so much. And that is another variable factor in this thing that we are talking about now. I do not think there is any yardstick.

I have talked here of scientifically establishing; and whether we talk of scientifically establishing the profitability of an item, or scientifically establishing the cost of doing business on the item, it amounts to the same thing. But in the absence of being able to prove what the actual cost of doing business is on that particular given item, it necessarily remains a matter of opinion as to whether that price of \$2.95 is or is not a loss leader, even to Safeway.

Certainly they have not submitted any proof to indicate what their cost of doing business is on cigarettes. They have only expressed an opinion. But they have also admitted that it is only an opinion--and that applies, in principle, to all the pricing that

they do. They try to guess; and I say that is what we all try to do. We try to guess.

THE CHAIRMAN: It would apply to your business, too, I suppose?

MR. SHELLY: Certainly, it does, because we have no scientific yardstick to apply. But I think that has to be recognized, along with the point I have just made.

THE CHAIRMAN: But in fixing the margin or the ~~mark~~-up, surely a competent businessman will attempt to fix it--he may not be able to do it in each individual case--but he will attempt to fix it so that, in total, having in mind the amount of sales he expects to make, that he will have a certain amount of gross profit which he knows will be enough to carry his overhead.

MR. SHELLY: That is right. By taking stock periodically he knows where he is going, and there may be some minor adjustments required, always subject to competitive conditions, and so on.

So that, in over-all results, subject to competition allowance, it does provide a little profit. But when you narrow it right down to individual items--and I have not read all the briefs which have been submitted to the Commission, but I have read a lot of them, and I have not yet come across any evidence to the effect that anyone has been able to establish that the cost of doing business on any given

item is so much. So I think that has to be taken into consideration along with this point I have made here.

But my purpose particularly in registering this point is that the formula which we recommend, regardless of whether it is or is not a loss leader in the opinion of someone--and there may be varying opinions on it--that formula automatically comes into operation. And without any necessity of proving something which cannot be proved anyway--no one can prove it. Certainly if you get down below the invoice cost, then you know that there is absolutely no provision for any mark-up, or at least for any overhead, whatsoever. And it is not necessarily a loss leader, either.

THE CHAIRMAN: I think we have to bear in mind that, if we do not have a definition for "loss leader", which is the thing this Commission is investigating, and which is presumed to be the evil, where it exists--if it exists extensively-- I should say it was presumed by the MacQuarrie Committee to be such, and that is why we are considering it--if we do not define it, and we provide a remedy for something, we ought to be certain^{that}/what we are providing that remedy for is an evil.

MR. SHELLY: That is right.

THE CHAIRMAN: That is the angle we will have to look at rather carefully.

MR. SHELLY: That is right, yes. Now, I would say this, that in dealing with these cigarettes I selected an item that is somewhat unique because, generally speaking, the independent is not proportionately at a disadvantage in the same way as he is on cigarettes. It is very pronounced on cigarettes. But I used that as an example, because the figures were there, and you were familiar with the case, so I thought it would make a good example. Shall I proceed?

THE CHAIRMAN: Yes, do.

MR. SHELLY: Then, proceeding with the brief, and my next heading:

A LIFE LINE FOR THE EFFICIENT INDEPENDENT

The solution to this problem of course must be found on a basis which will not be prejudicial to the interests of consumers. Let's see what would happen in Vancouver when employing our formula. Well, retailers would promptly buy their cigarettes from Safeway at 2.95 less 5 per cent, a net cost of 2.80.

I will interject that I think it is most likely that wholesalers would drop their price to that level, rather than see the business go to the retailer. Really, it is quite a reflection on the wholesale level if retailers have to go to a retailer to make a purchase, rather than being able to purchase from the wholesaler,

who is their normal supplier.

THE CHAIRMAN: I suppose if they did not do that, Safeway would become the sole purchaser of all the cigarettes at \$2.69, and the price of \$2.80 would apply to all the other people.

MR. SHELLY: That is right. Then, to continue:

That is, they would do that unless wholesalers dropped their price to that level. In giving up 15¢ out of their 26¢ to the independent, Safeway would still retain 11¢ for their warehousing function .. which still is a disproportionate amount, since according to the normal pattern the wholesale margin in cents seldom exceeds one-half the amount of the retail margin. While the effect of our formula would not be that of perpetuating the inefficient, it certainly would serve as a life-line to the efficient independent.

THE CHAIRMAN: It might force Safeway to make a lot of money, because under your formula Safeway would not have to take the cigarettes into their warehouse. They would merely have to place the orders with the manufacturer, and have the retailer go and pick them up there.

MR. SHELLY: That is right.

THE CHAIRMAN: So they would make

11 cents for a bookkeeping entry.

MR. SHELLY: That is right.

MR. WHITELEY: As a practical matter, as I understand your formula, the system of distribution is not through the initiating retailer, but through his supplier.

MR. SHELLY: Well, it is optional, Mr. Commissioner. According to the formula it is optional. But in this instance Safeway would have the privilege, under our formula, to say to that retailer who comes to buy cigarettes from them--they would accept the money from him and they would say, "You go to our distributing warehouse, and pick them up, and we will see that those cigarettes are ready for you at that time."

MR. WHITELEY: Let us get away from this particular relationship between MacDonald's Consolidated and Safeway, and deal with the general situation.

MR. SHELLY: Yes.

MR. WHITELEY: In your formula you have a number of retailers going in to the initiating retailer and giving their orders?

MR. SHELLY: Yes.

MR. WHITELEY: Which, presumably, he would pass on to his supplier. But, let us say that his supplier does not want to handle them.

MR. SHELLY: He could not do that.

MR. WHITELEY: They would have to assume the distributing function?

MR. SHELLEY: Yes.

MR. WHITELEY: What sort of costs would that build up for him?

MR. SHELLEY: Not very much.

MR. WHITELEY: Do you mean if he had to set up a separate unit in his establishment to handle these---

MR. SHELLEY: Oh, no, no. Actually, where pricing follows a reasonably normal pattern, there is no occasion for this sort of thing happening.

MR. WHITELEY: No, but I mean in a case like this.

MR. SHELLEY: And I cannot envisage any case where it would run into any volume of business--I mean where it would require extra facilities or anything like that.

THE CHAIRMAN: Assuming, with regard to cigarettes, that the wholesalers were stubborn and would not meet the price of \$2.80, and assuming that the Imperial Tobacco Company, as I think would probably be the case, would decline to deliver on Safeway's order to several thousand retailers, separately, then Safeway would have to set up a warehouse to supply all the tobacco people in the area, would they not--all the retailers?

MR. SHELLEY: It would not, in any

event, be the Imperial Tobacco Company, because they would not do that. You see, the supplier of the Safeway retail stores is their own distributing warehouse. So we do not go back as far as the manufacturer.

THE CHAIRMAN: I am not talking about---

MR. FAVREAU: Take in any independent retailer's store.

MR. SHELLY: Yes.

THE CHAIRMAN: I was saying Safeway, because we were talking about them. And it seems to me that if any retailer in that position, selling, we will say, at \$2.95, was required by any retailer, or possibly by all the retailers, in that area, to deliver at \$2.95, less five per cent, or \$2.80, then, if the wholesalers would not deliver direct for \$2.80, that retailer would have to get in a stock---

MR. SHELLY: That is right.

THE CHAIRMAN: He would have to get in enough goods to supply all the retailers asking him for cigarettes.

MR. SHELLY: That is right.

THE CHAIRMAN: And I suggest that might involve a lot of space, and some trucks and some help, and maybe quite a bit of expense.

MR. SHELLY: If he did, he would make a lot of money out of it.

THE CHAIRMAN: I do not know how

much it would cost to do it, but it seems to me it would involve quite a bit of shifting around of his operations.

MR. SHELLEY: At 11 cents.

THE CHAIRMAN: I mean that the volume of deliveries he would have to make would be quite large. Take, for instance, the city of Montreal--how many thousands of little tobacco stores there are in that city. I would not want to say, but I think that there may be a couple of thousand, anyway. There are more than nine thousand in the Province of Quebec, and there would probably be two thousand in Montreal. If you had to stock goods and supply and deliver goods to a couple of thousand dealers, you would have quite a time doing it, I should think.

MR. SHELLEY: Just as Mr. MacAulay pointed out in his own brief, if an operator gets down to handling a tremendous volume of business in one item, that is really where you get into the position of reducing your cost of doing business. You can make a lot more money that way by handling a large volume in one item than you can if it is merely incidental out of 2,900 items.

THE CHAIRMAN: But nothing of this kind would be very permanent, would it?

MR. SHELLEY: I think the kind of situation we are talking about here is purely

theoretical. It is not one that would happen.

THE CHAIRMAN: If it did happen, and if he were forced into that position, in which he would have to supply all these people, he would have to set up equipment which probably would not be needed in the next week or so, because other people would take a hand in the matter by that time.

MR. SHELLEY: In practice it would never reach that stage.

THE CHAIRMAN: It seems to me it might be an extremely difficult thing. He would either have to deliver to all these couple of thousand retailers in Montreal, or let them come to his place and get the goods, and in either case I think it would be quite a pile-up, would it not?

MR. SHELLEY: In practice, no--because in practice you would not get into that kind of situation, at all. The other phase would not allow it to happen.

It takes care of itself in this way, that if it is a real loss leader, then by the very token that it is a loss leader this party who, in the first place, established that price, established the price on that item with an ulterior motive, with the idea of having that item bring people in. It would not be with the idea of making money on it, but with the idea of having that item bring people into the

store
/to buy other items. And that is not unknown,
either.

So obviously, when he knows what the effect of this will be, when he engages in that kind of practice, he will not engage in that practice. That is the kind of thing that destroys competition. And it is for that purpose that we recommend this formula. And the thing we are talking about here right now proves that it would work.

MR. WHITELEY: Well, take another situation, where it might not be a severely cut-price article at all, but that the level of prices in the initiating retailer is such that the other retailer thinks it desirable to put some check on the initiating retailer. And they rush in and order supplies in sufficient quantities and numbers to embarrass the first retailer in his operations. How can that be prevented, under your formula?

MR. SHELLY: Of course, as has been indicated, they would be making this retailer a lot of money, because---

MR. WHITELEY: Oh, no, no--let us follow this thing through a little farther. You speak of volume business producing volume returns. But it does, if you have operations that are set up to produce the volume at the lowest cost of handling.

MR. SHELLY: Yes.

MR. WHITELEY: Now, the type of store we are speaking about is the store which engages in self-service operations.

MR. SHELLY: Yes.

MR. WHITELEY: The type of orders you are contemplating under your formula are not self-service operations at all.

MR. SHELLY: That is right.

MR. WHITELEY: They are individual purchases which have to be handled in an entirely different way.

MR. SHELLY: That is right.

MR. WHITELEY: Now, to suggest that a retailer, suddenly being faced with a deluge of individual orders, out of keeping with his normal type of operations, would find that a profitable business, at the margin you put on your formula, seems to be entirely unrealistic.

MR. SHELLY: It brings us into an entirely different quantity basis, and obviously when you buy large orders like that, in unbroken packages--large orders like we are speaking about, cigarettes--other items are more in case lots; cigarettes are unique. Cigarettes are in small cartons. In the normal course of events, if we were talking about dry groceries, we would be talking in case lots, because that is the way the retailer would buy.

There is no hardship in that at all. And, if the price, as you are suggesting in

this instance--if the price is not deeply cut, obviously it would become a profitable thing for the selling retailer. And it is not that he has to sell from stock. He has the opportunity to get supplies in.

MR. WHITELEY: But I mean, how could he adapt that type of wholesale operation to his retail unit? Surely he would have to set up a separate staff in his retail unit to handle these wholesale orders. He would have to set aside part of his store or his loading platform, or something else, to handle these case lots and their re-delivery. Now, to suggest that that can be adapted to the ordinary processes of a retail unit, without involving additional costs, seems to me not to appreciate the nature of the operation you have in mind.

MR. SHELLY: That sort of thing would not happen unless it is profitable for this buying retailer to do it that way.

MR. WHITELEY: No, but I am suggesting the situation that they might consider it desirable, from a competitive viewpoint, to embarrass the first retailer.

MR. SHELLY: Yes, and I am glad that you raised that point. I am very glad this point is raised, because actually I would have come to this in any event later on. But it is opportune to settle it right here. And that is this, that we are dealing with something here that is of very real importance

to the retail food trade of Canada. So far as we can see, there is no other acceptable answer to this problem.

We are not suggesting for one moment that this is a perfect answer. We do not think there is a perfect answer. But we believe that it is a very practical one, one that will work very well in practice. It will--and I am coming back to your point--I will do it right now--that is one of the reasons why we have, as we go on a little farther in our brief, a recommendation, and we have started things in motion along that line, that we want to have an organization across Canada of voluntary consumer-retailer committees.

And I want to assure the Commission right now that this thing is of such great importance to the food trade, the retail food trade of Canada, that that trade is not going to take any chances of abusing the only salvation which we can see can be made available. And it is proposed that consumer-retailer committees, without any cost to the Government, we visualize will be there as a clearing agency.

At the retail level, we have the retail food division of the Retail Merchants Association, to do the educational job that would need to be done. But I can assure the Commission that steps would be taken so that there will be no such thing as ganging up,

because the only effect of any such attempt would be to destroy the only thing that we know of that can become available to them to keep the small man, the efficient man--not the inefficient man--the small efficient man in the community.

MR. WHITELEY: The main reason I have raised this point now is that in the presentation of your formula there is absolutely no safeguard whatever against the use of that in a way which would be detrimental to the efficient distribution of goods. You suggest that the safeguard is in the self-restraint of the people who might benefit from it. So far, that is the only indication of safeguard that you have put forward.

MR. SHELLY: As I say later on in the brief, we welcome any suggestions. What we say in here is that in presenting our brief, as we did at Saskatoon, we would present it with the idea that perhaps it is not the last word in every respect, in every detail, with regard to the mechanics of the situation. And we know that there are certain details to be worked out. We say now, as we should say--and as anybody should say who comes before this Commission with a recommendation--that it is not the perfect thing. And I think I can say, too, that no matter how long we look or how far we search for a solution--that is, a reasonable solution--to this problem, we will not find the perfect one.

And if I may once again refer to the days of the Wartime Prices and Trade Board, Mr. Gordon used to call it rough justice. We had wartime conditions in those days, entirely different from what we have now. But, nevertheless, what we are talking about now will mean-- and I am not panicky when I say this to you-- it will mean life or death, so to speak, in a business sense, through the years, for many efficient operators.

MR. WHITELEY: Perhaps, in view of the fact that reference has been made to the regulations of the Wartime Prices and Trade Board, it should be said that it is significant that in the wartime period, so far as formulae went in the various fields, they were setting maximum conditions. Any operator who felt that he could sell at less than those maximum conditions was quite free to do so--in fact, every encouragement was given to him to do so. Whereas the situation you are now putting forward is one in which that safeguard of being outside is not present. It becomes a sort of minimum condition. And that is why, in reviewing it, one must be extremely careful that it has sufficient safeguards in it.

MR. SHELLY: That is right. I was merely referring to it in the sense that there is no such thing as any formula which will be perfect in every respect.

And then again, thinking back to yesterday, Mr. Staples in speaking for the Co-Operative Union of Canada, in principle, made a suggestion very much the same as what I am suggesting with regard to consumer-retailer committees. It should be remembered that Mr. Staples put great reliance on the fact that if there were a body which could come and have hearings--he went far beyond what we propose doing. As a matter of fact, in our humble opinion these consumer-retailer committees, being localized, perhaps would be far more effective because they are always there.

I welcome the idea that Mr. Staples brought out. I can visualize that the time may come where, even if our proposal were carried out, it could be supplemented by something along the lines of what Mr. Staples recommended.

Shall I proceed with my brief?

THE CHAIRMAN: Yes, you may proceed.

MR. SHELLY: Under our formula each and every retailer decides for himself if and when he is better off to buy his requirements of a given item from a competing retailer instead of from his normal wholesale supply source. This, in itself, automatically discourages any competitor, be he large or small, from indulging in pricing practices which are

deceptive in concept and effect. Under our formula there is no occasion to ponder whether or not in that given instance that price falls into a loss leader category .. it may honestly not be in that category so far as that selling retailer is concerned .. it may honestly be in that category so far as some, if not all, of his competitors are concerned. Whatever the situation, the remedy automatically is there for those who are most adversely affected, whether or not in the opinion of someone it was not a loss leader and in the opinion of someone else it was. Perhaps they both were right.

A FORMULA CONSUMERS READILY UNDERSTAND

Our formula is very simple indeed, but being based upon a new concept it sometimes is misunderstood because of its very simplicity. That its provisions and implications can readily be absorbed even by persons without any experience in the retail food field was quickly demonstrated to me when this formula was examined by an executive committee of the Saskatchewan division of the Canadian Association of Consumers. Only one of the four ladies present had the benefit of practical experience in the food field, yet all of them quickly

grasped every angle and implication of this formula. This may be taken as an indication that consumers generally quickly would grasp the merits of such legislation.

OUR FORMULA - IN ESSENCE

Now to refresh our memories, here in quick review are the essential features of the formula proposed in our June 29 brief, by which we stand.

"Any food retailer has the automatic right to buy any given food store item from any other retailer at that retailer's lowest price available to the consumer on the previous business day, less a modest wholesale discount of 5 per cent or 10 per cent depending on the item. Any food retailer has this right so to buy from another retailer regardless of whether or not the price in question is a cut price. That is why, under this formula, there is no occasion to define what constitutes a loss leader, or even what constitutes a cut price. The buying retailer himself decides if and when it is to his advantage so to buy from another retailer instead of buying from his customary wholesale supplier. He can buy any given item on one and the same day from as many retailers as he may wish to

buy from. He may buy that item from each of them in whatever quantity he desires, but not in excess of a \$300. value of any one item from one and the same retailer. He must pay for the purchase at time of placing his order with any such other retailer but generally the selling retailer is not required to supply the goods until he has had the opportunity to order and receive such extra supply in the normal course of his business. If the selling retailer so desires, he can arrange with his local wholesale supplier that the buying retailer will pick up the purchase directly from the wholesale plant, so that the selling retailer does not incur any handling costs whatsoever concerning the transaction."

EQUALLY FAIR AND EFFECTIVE FOR THE SMALL,
MEDIUM AND LARGE OPERATOR

That, Mr. Chairman, in essence is our basic formula. It is equally fair to the small, medium and large operator. We are not proposing the imposition of any so-called minimum or floor price. Any retailer remains free to price his goods in any way that he wants to - on an economic or uneconomic basis - but he must be prepared to supply his fellow retailers, if they wish to buy from him, at the same price at which he had the item available to

the consumer, less a modest wholesale discount. In this way, his competitors always remain in a position where they can be competitive with him, while at the same time having the 5 per cent or 10 per cent wholesale discount, as the case may be, to cover at least a portion of their cost of doing business. Any given retailer has the same rights as his fellow retailers - regardless of size or class - so that he is neither at an advantage or disadvantage.

Now there necessarily are a few qualifying provisions to our formula, to the end that the purposes of the formula may not readily be circumvented and also to the end that a retailer may be relieved of the obligation to sell to another retailer under specified circumstances. I shall review them quickly.

PRICING ERROR - There is no obligation to sell to a retailer if the uneconomic price resulted from a pricing error, as sometimes happens in advertising, provided sales are not made to consumers.

THE CHAIRMAN: You mean that if in an advertisement there was an error--let us say, instead of saying \$50 it said \$5, and the retailer who ran the advertisement felt that he had to sell some in order to keep the good faith of his customers and he sold one or two,

that he would then be under an obligation to sell \$300 worth?

MR. SHELLY: I think it would have to be qualified. There may be some legal technicality there, that there should be one sale made.

As a matter of fact, a few days ago a case like that came to my attention in Saskatoon. You will recall that there was a drop of nine cents in the price of coffee. One retailer who has a very substantial business said to one of his new girls something about the price of coffee being down by nine cents. She marked the coffee at nine cents a pound, instead of the proper price. She did that, instead of reducing the price by nine cents--and they sold a few pounds of it.

THE CHAIRMAN: I heard of a case a good many years ago, when fur coats were not as expensive as they are now, where a department store advertised fur coats at \$1.50 instead of \$150.00. In setting up the ad a mistake was made and it went in as \$1.50. They were advertising ten of them, and they sold the whole ten at that price of \$1.50 instead of \$150. You would have to have some provision to take care of a situation of that kind.

MR. SHELLY: Yes.

THE CHAIRMAN: Otherwise a firm

could be bankrupted by an error of that kind.

MR. SHELLY: Yes, that would be possible. Then, to continue with the brief:

BONA FIDE CLEARANCE ITEMS - In this case, no one retailer has the right to buy more than 25 per cent of the clearance quantity on hand at the time he places his order with that retailer.

THE CHAIRMAN: If a dozen or so went after him, he would not have much left.

MR. SHELLY: It would take only four of them to clean him out. If it is a bona fide case, it is a clearance item, and he wishes to get rid of it anyway. That is about the only way of making sure---

THE CHAIRMAN: But he gets rid of them at a big loss.

MR. SHELLY: ---that he is not obliged to sell \$300 worth.

MR. WHITELEY: Would not some retailers like to use those things to build up goodwill with their customers?

MR. SHELLY: I do not quite understand your question.

MR. WHITELEY: Clearance items, do they not use them for purposes of building up goodwill?

MR. SHELLY: I think every retailer has clearance sales.

MR. WHITELEY: But I say that he

might like to make use of a clearance sale to build up goodwill with his customers.

MR. SHELLY: Yes.

THE CHAIRMAN: He would not be happy, then, to see four of his competitors buying them, would he?

MR. SHELLY: In the foodfield there is very little of that, actually. When you get into dry goods, footwear or dresses, at the end of the season it is a real event. For instance, I can think of Birks store in Saskatoon, once each year they have what they call a plum sale, and you really get some real bargains. People look for that sale.

MR. WHITELEY: But, in the food field, if a store puts on a clearance item and the customers come in and find that there are no supplies---

MR. SHELLY: In the food field it is inconsequential.

MR. WHITELEY: But if the customers came in and found that the supplies were all gone, by reason of competitors coming in and taking them all---

MR. SHELLY: It is one of the ways of protecting the retailer against the obligation of having to sell \$300 worth to another retailer. If there is a better way of doing it, we would like to find a better way. But actually I think there can be no legitimate exception taken

to that, because in the food field clearance items are not of any consequence.

MR. WHITELEY: But let us say it is a hardware item that they wanted to get rid of. Do not food stores carry certain special hardware items now?

MR. SHELLY: Some of them do.

MR. WHITELEY: And if they put an ad in the paper saying, "Tomorrow we are selling out our supply of sauce pans," any one of the competitors seeing that could come in and buy them all up, could he not?

MR. FAVREAU: The day after.

MR. SHELLY: That is right, it is not available. Oh, in the case of clearance items it is available then. It would have to be, in the case of clearance items.

MR. WHITELEY: I am just raising this point to see whether you have considered any safeguards to protect the legitimate retailer who wishes to keep faith with his customers. Some of his competitors might wish to embarrass him.

THE CHAIRMAN: They might embarrass him even without the desire to do so. If they thought they could get the advantage of picking up some of these clearance items, they might go after them for their own goods--but it might still embarrass him--that is, if it worked that way, and if the situation was that

his customers were coming in and expecting to find a fair supply of goods on hand, and find that two or three of the dealer's competitors have bought up all the stock on hand.

MR. SHELLY: In the food field--and we are dealing with the food field,--it is very rarely that you come across an item that is advertised as a clearance item. There is, of course, the odd time, the odd tail-end item, but that is of no consequence. Usually, the usual way of doing it is that you have these shopping buggies, and you put a sign on a shopping buggy; and there may be half a dozen tins of something that is out of season, or some damaged cans, and so on; and that is the way it is sold out. But it is very, very rarely that you have a clearance item advertised.

MR. WHITELEY: If that is so, then of course it is a very minor problem in the food field.

MR. SHELLY: That is right. So far as the food field is concerned, that is the case. Shall I proceed with my brief?

THE CHAIRMAN: Yes, proceed.

MR. SHELLY: Then,---

SHORT SUPPLY ITEMS - Here, Mr. Chairman, I take the opportunity to include supplementary clarifications as covered in my letter to you of July 8. The object of

this clause is to exempt a retailer from any obligation to give up to other retailers his supply of an item which legitimately is in short or semi-short supply. Normally, a retailer does not cut the price of an item which legitimately is in short supply in relation to consumer demand. Therefore, the inclusion in this clause of a minimum markup provision has no effect on the price which the consumer in any event would pay. Without this minimum markup provision this exemptive clause would serve as a convenient loophole for circumventing the basic intent of this formula. Such circumvention could effectively be practised quite extensively by resorting to planned brand rotation - a practice whereby an operator in fact has continuity of supply of that given item but poses perpetual shortage by repeatedly replenishing with a different brand on a brand rotation basis. As is well known, some retail operators who promote private brands have canneries and other processing plants under their control and, for reasons best known to themselves, have a multiplicity of brands for one and the same item - the very same by kind and grade. So, the minimum markup provision here is harmless from the consumer point of view and necessary as a

guard against abuse of this exemptive clause.

MARKET ADVANCE - It is the purpose of this clause conditionally to exempt a retailer from the obligation to sell to other retailers where his retail price lags as a result of having a supply of the item at below replacement cost. The minimum markup provision serves as a guard against abuse of this exemptive clause. While speaking to this clause at the Saskatoon hearing I spoke of several grocery items by way of example, but it escaped me to deal with perishables such as meats, fish, poultry, fresh fruits and vegetables, bakery goods, etc. In these perishables the retailer's stocks remain so current that this price-lag situation hardly arises and in our view it would be preferable, in the interest of simplicity, not to have this exemptive clause apply to such perishables. This view is further supported by the fact that at the wholesale level prices on such perishables often are a matter of bargaining, making it practically impossible to determine when a market change occurred.

MR. WHITELEY: What is the significance of this? It is not quite clear to me.

MR. SHELLY: There is the exemptive

clause exempting the retailer from his obligation to sell to other retailers in the case of a market advance. I will use the case of canned pork that I used in Saskatoon, as an example. You will recall that. There was Government subsidized canned pork. The price advanced, and some retailers bought quite a little of it, just prior to the price advance. They pass that price advantage along to the consumer.

Now, if we did not exempt the retailer in those circumstances from the obligation of having to sell to other retailers, at whatever his retail price is, less that 10 per cent, as it would be in the case of canned meat, then there would be a tendency for him, in order to protect himself on that supply that he has on hand, to raise his consumer price. And that is what we do not want to have happen.

That sort of thing arises in the so-called dry grocery store field. This price lag does occur. But, supposing tomorrow morning the price of bread is up a cent. The same thing, largely, applies in connection with fresh fruits, perishables, meats, too. The retailer gets his supply practically from day to day.

So that you do not have that on perishables. On perishables you do not have that lag, that price lag. In other words,

the retailer follows the market. Of necessity he follows the market on perishables; whereas, on dry groceries, often he does not. So it just depends on the particular retailer.

Some retailers, when they have a pretty good idea that a certain commodity is going to advance in price, will protect themselves on the supply, and they lay it in. Sure, they have the carrying costs of interest on investment, and so on. And perhaps after a little while they raise their price a little bit in recognition of those carrying costs. But still, they are giving the consumer and continuing to give the consumer for some time better value than would be possible on the basis of current replacement costs.

MR. WHITELEY: Is it not the case, though, that perishables--the fluctuations in prices of perishables, tend to be more sharp?

MR. SHELLY: Yes, sometimes.

MR. WHITELEY: In that case, if you take them out of your exemption clause, it might become a real hardship in some cases.

MR. SHELLY: Well, the point is---

MR. WHITELEY: For instance, if you had a frost in California and the price of oranges jumped overnight, then if you had them out of your exemption clause, the initiating retailer would be caught with that market advance.

MR. SHELLY: The point I make is that I think we have to differentiate between the two, because there is not the price lag. In other words, on perishables, the retailer follows.

MR. WHITELEY: Yes, I see what you mean. But the other point I make is that the fluctuations in the prices of perishables may be very sharp.

MR. SHELLY: At times they are, yes.

MR. WHITELEY: And, if they are, and then if they are not exempted, you make it a real hardship on the initiating retailer.

MR. SHELLY: Well, we could have a shorter time period there, or at least a very short time period of exemption, so far as that is concerned, but I think there would have to be a distinction between perishables and regular grocery items.

THE CHAIRMAN: Would you have any provision with regard to the case of a retailer who would get a specially good price on a large quantity of goods? Take this sort of case--and I do not know whether it happens very frequently or not, but I am pretty sure that it has happened--the case of a cannery which is in certain financial difficulties and has quantities of canned tomatoes on hand. In order to raise cash, and being unable to get further advances from the bank, they make a

deal with a retailer for a couple of thousand cases of these tomatoes at a pretty low price.

Now, that retailer is thereby placed in a position whereby he can sell at a price that is definitely below the going retail price on tomatoes. But he might like to do it, because it would make a lot of friends for him among customers and prospective customers. What would happen to your formula in that case?

MR. SHELLY: I recall this very same thing being brought up in Saskatoon.

THE CHAIRMAN: But we did not get to the bottom of it there.

MR. SHELLY: I remember the explanation I gave at that time, too. It was this, that in dry groceries we actually do not have these things happen, because these different canneries, and so on--and we do not have to talk about canned goods, because it can apply to anything else. But these different processing plants, either they have their own sales representatives in the different centres, or they have brokers. And obviously, they are out to get the best prices they can for the supply of goods they have on hand.

In other words, it is not offered to one particular operator. These brokers--in the case of Libby's and Canadian Canners and General Foods and Standard Brands--they all have their own salaried men in each of

the different markets and they contact each one of their customers. They all have a chance on that merchandise. And, therefore, it is not an isolated bargain, so to speak.

THE CHAIRMAN: I am thinking of an organization which would not necessarily be as large as the ones you have mentioned. But I do recall one that was formerly operating in Winnipeg on a much smaller scale. I do not think they had representatives everywhere, and they ultimately did go broke.

I certainly am under the impression that on some occasions they had made fairly large sales to raise cash--sales in bulk lots to individual purchasers.

MR. SHELLEY: In practice we do not come across that. I can think back to a time when we have had it, as an unusual case. I remember, for instance, the Broder Canning Company of New Westminster going broke, and the bank lost money there. And whatever inventory was on hand, the bank cleaned it out. There was a distress stock.

It is one of the things I had not anticipated. But if there is a condition like that which would need a special provision, naturally we would welcome anything at all that we could bring into it.

THE CHAIRMAN: Well, that is one illustration where a particular retailer would

get a quantity of goods at a specially good price. Does your formula apply automatically in that case, or is there some exemption so that the retailer who has got the specially good buy would not be forced to share his advantage with all the other competitors who wish to come into the picture?

MR. SHELLY: We have not anticipated that condition.

I think I can say that, as a matter of practice, I am not aware of any condition that would warrant any such provision. But one never knows what kind of times we may run into. If we get into a serious depression and there are bankruptcies, and so on, at the manufacturing level, then we might get into that sort of thing. But it could be guarded against by having a specific provision. I was thinking of another thing somewhat along the same lines. In one of the briefs--I think it was the Safeway brief--the question was raised regarding promoting the sale of an over-supply of farm products. We would be very glad to see a special provision so that if it seems desirable--and I do not think there is any situation that I can recall that we have been into, or with which we have had experience--I cannot visualize any situation of that kind where there would be any special provision needed. But certainly

we have no objection at all to that sort of thing. Indeed, we would welcome any idea like that.

The provision could be made whereby any provincial authority or federal authority identifying a certain item as a surplus product, as they did last year in the case of cabbage in Manitoba; the Department of Agriculture took a hand in it and did their best to dispose of that stock. And the retailers are always willing to do the best they can to facilitate that sort of thing.

There is nothing in our formula which could interfere with that. But if there is any feeling on the part of anyone that a special provision should be made, we would welcome it.

MR. FAVREAU: Does that apply to a private brand, also?

MR. SHELLEY: Yes.

MR. FAVREAU: Let us say I operate a chain of grocery stores.

MR. SHELLEY: Yes.

MR. FAVREAU: And that, after long testing, or otherwise, either I or one of my employees has succeeded in obtaining a recipe for a very excellent type of mayonnaise, or perhaps it might be ketchup. Let us say it has become famous, and I have some interest in seeing to it that I remain the sole person

who will deal in that particular product. And I have some interest in seeing that it should remain on my own shelves, so that the public in calling in to my store will get this product, which has a very special quality.

If your formula were to apply in that particular case, any interest that a legitimate and ethical dealer would have in such a product would be lost, and all the effect of such a property would be lost.

MR. SHELLY: Other retailers would have access to that item and could make it available to the public.

MR. FAVREAU: Yes, but my purpose in having a thing of particular quality in my store is to bring the customer to that store who wishes to buy it.

MR. SHELLY: That is one aspect of the matter. But, on the other hand, if the other stores also make that item available to the public, it is just that much more popularized.

MR. FAVREAU: Perhaps it popularized my brand, but it does away with my purpose or my interest, that of having as many people as possible coming into my store, where they will find that brand.

MR. SHELLY: Yes, it works both ways. It popularizes it on the one hand. And I would say this, that there is a very automatic deterrent to that happening. I am not saying it would not happen. But there is a very automatic

and inherent deterrent to that happening, because the margin of profit available--the gross margin, the mark-up--available to other retailers on that item is not sufficient, speaking generally, to cover his cost of doing business on that item, under this formula.

THE CHAIRMAN: I presume in a case such as that Mr. Favreau mentioned it would be in the 10 per cent class?

MR. SHELLY: Yes, for tea and coffee. But it could just as well apply to tea and coffee as to other items. Tea, coffee, cigarettes and other things like that--staple commodities.

THE CHAIRMAN: He was referring to something that he had developed which was specially good.

MR. SHELLY: Yes.

THE CHAIRMAN: It would not be in the five per cent class.

MR. SHELLY: No. Actually, in practice, while we do see popular items, private brands, of teas and coffees in particular, when we get into--well, you were just using this as an example, I know--but in mayonnaise, and things of that nature, general grocery items, we do not find them too popular. Certainly they are not in the class of the nationally advertised brands. Shall I proceed with the brief?

THE CHAIRMAN: I am afraid we have been interrupting you somewhat frequently.

MR. SHELLEY: Then:

OTHER PROVISIONS - Then the formula has some additional clauses setting out the mechanics or conditions of ORDERING, of PAYING, of ACCEPTANCE OF THE PURCHASE, of TIME TOLERANCE, of PREMIUMS AND OTHER SUCH BENEFITS, of COMBINATION SALES, of INDEMNITY IN CASE OF NON-CONFORMANCE and finally of NOT OBLIGED TO RE-SELL, which specifically deals with company sponsored brands. Unless the Commission desires any elaboration on these clauses I have nothing to add at this time in regard to them.

CONSUMER-RETAILER COMMITTEES

As indicated earlier, we aim to work hand in hand with the Canadian Association of Consumers. Exploratory discussions already have been held at both the national and provincial level concerning the setting up of consumer-retailer committees on a TRADING AREA basis, a PROVINCIAL basis and the NATIONAL basis. It is not suggested that such committees should be vested with any powers. But their very existence should prove of considerable value, since they would serve as clearing agencies for

enquiring retailers and as a source for reliable information for Press and Radio. We feel confident that the functioning of such committees would greatly encourage retailer conformance with our proposed legislation. After all, the only thing that would constitute non-conformance would be if a retailer refused to sell to another retailer in accordance with the provisions of said formula. It is not a matter of policing prices or anything of that sort. Such committees would be in a position to give valuable guidance to uninformed retailers and also would keep the Retail Merchants Association posted, to the end that this association - in co-operation with any other interested trade body - might effectively clear the air on any misunderstanding at the retail level. It is a foregone conclusion, Mr. Chairman, that we shall receive the glad hand of the Canadian Association of Consumers in bringing this plan to fruition as rapidly as suitable personnel for appointment to such committees becomes available in the different areas. It would seem to us that, from the point of view of the Government, nothing could be more desirable than that such voluntary consumer-retailer committees should

serve to promote the effectiveness of this constructive program.

THE CHAIRMAN: I notice it is now 5:15, and I think perhaps we are getting into something which will take quite some time. I think, therefore, we had better adjourn until tomorrow. Perhaps we might resume tomorrow at 9:30 a.m.

MR. SHELLEY: I am quite prepared to do that.

THE CHAIRMAN: We may have a brief for which arrangements have been made, and which might be brought in ahead of this.

MR. SHELLEY: That would be all right. I shall be here at 9:30, anyway.

---Whereupon the hearing adjourned until
the following day, Friday,
September 17, 1954, at 9:30 a.m.

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RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 1

OTTAWA

SEP 17 1954

RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF
an inquiry
Regarding Loss Leader Selling.

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RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF
an inquiry
Regarding Loss Leader Selling

--O--

Hearing held (in public) in the Supreme Court
Building, Ottawa, Friday, September 17th, 1954.

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PRESENT:

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.,	Chairman
Guy Favreau, Q.C., B.A., LL.B.,	Member
A. S. Whiteley, B.A., M.A.,	Member

--O--

APPEARANCES:

Mr. N. W. Wickwire, Q.C.,	}	Counsel to the Commission
Mr. Paul Gerin-Lajoie		
Mr. R. M. Davidson,		Secretary to the Commission
Mr. L. A. Skeochh		Senior Economic Adviser to the Director of Investi- gation and Research.

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REPRESENTATIONS:

Toronto Retail Tobacconists Association,
Represented by:
J. C. Farr, President.

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THE CHAIRMAN: I believe we have a special request for an appearance this morning at 9.30 a.m.

MR. WICKWIRE: Yes. Mr. J. C. Farr, President of the Toronto Retail Tobacconists Association, has requested to make an appearance before the Commission. You will perhaps recall, Mr. Chairman, that this association presented a brief at the hearings in Toronto. And I think in view of the statements made by Mr. Tilley of Imperial Tobacco Company the other day, that Mr. Farr wishes again to be heard.

THE CHAIRMAN: Then, Mr. Farr, would you come forward, please. I gather you have no formal brief, but that you wish simply to make some representations.

MR. FARR: We have just the brief we presented to the Commission when we were in Toronto.

MR. WICKWIRE: You are Mr. Joseph C. Farr?

MR. FARR: That is right.

MR. WICKWIRE: And I believe you are president of the Toronto Retail Tobacconists Association?

MR. FARR: Yes.

MR. WICKWIRE: And a tobacconist, yourself -- a retail tobacconist?

MR. FARR: Yes.

MR. WICKWIRE: I believe you have a

statement that you wished to make to the Commission, Mr. Farr, this morning?

MR. FARR: Well, Mr. Chairman, we read about Mr. Tilley's statements -- read about them in the press -- just a couple of days ago. And I feel, myself, and most of the tobacconists feel, that it is quite misleading to the public, in this respect, that Mr. Tilley has stated that there is only a two-cent margin between the cost of the cigarettes to the chain stores and of that to the retailers buying through the jobbers. That is one exception we take here.

MR. WICKWIRE: What is the difference?

MR. FARR: Well, we are not going to quibble about it. It is 22 cents. But it means a tremendous amount, so far as the profit is concerned, and how the cigarettes are sold by the chain stores.

THE CHAIRMAN: Do you mean 22 cents a carton?

MR. FARR: 22 cents a carton, a package of ten -- 200 cigarettes.

THE CHAIRMAN: And what Mr. Tilley said was two cents a package.

MR. FARR: Yes, which is quite misleading in that respect.

THE CHAIRMAN: 22 cents a carton is 2.2 cents a pack.

MR. FARR: Yes, 2.2 cents. The reason we take exception to that is this fact, that the

chain stores are buying them at jobbers' prices of \$2.69 per carton of 200 cigarettes. That is ten packages. The small retailer has to pay \$2.91 for a carton of 200 cigarettes -- ten packages.

MR. WICKWIRE: And that is from the wholesaler or the jobber?

MR. FARR: Yes, from the wholesaler or the jobber.

MR. FAVREAU: Is that irrespective of quantity?

MR. FARR: I beg your pardon?

MR. FAVREAU: For the small dealer, is that irrespective of the quantity?

MR. FARR: Irrespective of quantity, yes. Of course, there are some who buy direct, but not too many of them.

MR. WICKWIRE: Yes?

MR. FARR: If the small dealer has to meet competition, which he must do today, because I think it is a buyers' market today, the chain store is selling for \$2.98, which is a difference of 30 cents a carton between what he buys them for and what he sells them for.

THE CHAIRMAN: 29 cents?

MR. FARR: Yes, 29 cents -- I am sorry. The small retailer who buys for \$2.91 and sells at \$2.95 is making eight cents per carton -- or less than one cent per package, while the chains are making three cents a package.

THE CHAIRMAN: You mean \$2.99. I think you said \$2.98.

MR. FARR: I mean \$2.99, yes. I did not come down here, or I was not sent down, to quibble with Mr. Tilley or with the buying powers of the chain store.

But I did come down for one purpose, and that is that we feel that 25 or 30 of the small merchants, Canadians, doing business in the city of Toronto, should not be denied the opportunity to purchase cigarettes in quantity lots, if we have the proper storage facilities -- which we have -- and the proper means of distribution to our members. If you go over our letters I think you will find that Mr. Tilley has stated that we have not satisfied him that we have proper means of warehousing, and that we have not the proper means of distribution.

MR. WICKWIRE: What means have you?

MR. FARR: We have a warehouse as good as any jobber's warehouse in the city of Toronto.

MR. WICKWIRE: And you already have that warehouse?

MR. FARR: We already have it, yes. And, not only that, but we have a truck for our distribution purposes, and we also are ready to put in humidifier rooms to look after the tobacco.

MR. WICKWIRE: Has any representative of Imperial Tobacco Company ever asked to inspect

these facilities, or has any of them inspected them?

MR. FARR: Mr. Tilley has never come to see us, nor has any of his managers. Neither has any of his managers come to Toronto to see what facilities we have in that particular field. So I don't know why he makes such a statement.

All we want to do is, as small merchants-- we are fighting for our very existence today, against what I call a monster, which has crept in the midst of the small merchants throughout Canada, I believe. I am referring to the chain store menace.

They started out with food; now they have hardware; they have boys' wear -- they have everything, from soup to nuts. Before this, in a community where perhaps 20 small merchants were located, they have grabbed most of the merchants' livelihood, the products from which they made their livelihood, and they are playing football with them.

The small man cannot exist that way. And unless we are able to meet that competition by the chain stores, we will all go out of business.

MR. WICKWIRE: Do you feel that, so far as the tobacconists are concerned, if you had the same buying privileges as the chains you could compete with them?

MR. FARR: Mr. Wickwire, I said to you in Toronto, and I say it again here, that if we

are given the same privileges to buy that these chain stores are given, and all these big outlets are given, I think the **small** merchant can do well-- very well -- and meet competitive competition. But we cannot do it at the present time under these existing conditions.

MR. WICKWIRE: What do you say about maintaining the freshness of the quality of the tobacco and cigarettes?

MR. FARR: Mr. Chairman, I have two cartons of cigarettes here which were purchased a year and a half ago, and I defy Mr. Tilley to show me any jobber that can keep them any better than that. They are as fresh now as the day they were purchased.

MR. WICKWIRE: How did you keep them fresh?

MR. FARR: Through a humidifier -- humidifier rooms, and humidifiers.

MR. WICKWIRE: In your own retail outlet?

MR. FARR: Yes, that is right. And if we got this particular franchise from Mr. Tilley we would equip our stockrooms with those particular humidifiers.

MR. WICKWIRE: Have you ever returned to or has Imperial Tobacco Company ever picked up any stock of cigarettes from you because of staleness?

MR. FARR: Mr. Chairman, I buy direct

from Rock City and L. R. Green, the Macdonald people. And in all my years of buying direct, I have never returned one stale cigarette to those companies.

But when I had to buy Imperial through jobbers I was never done returning stale tobacco and cigarettes. And that is a positive fact.

MR. WICKWIRE: That is, stock you had purchased through jobbers?

MR. FARR: Yes, through jobbers.

MR. WICKWIRE: And wholesalers.

MR. FARR: Yes. It would have been lying on a shelf, or if they did not have it they would pick it up from some store, and bring it to me. I don't know how long it had been lying in those stores.

It is not more than a year ago, I think, that I sent back about three or four thousand fifties, on account of that. I think it was about Christmas time.

MR. WICKWIRE: How do the facilities which the Toronto Retail Tobacco Association have for warehousing compare with the facilities which the Toronto wholesalers and jobbers have for the distribution of tobacco products?

MR. FARR: Of course, we are only infants, starting out on this venture. We have stated to Mr. Tilley what we would be able to purchase, and I think we are taking the proper attitude and means of selecting our clientele for the

association. In other words, credit references have got to be checked, and different things like that so that we start out with a very limited number of people. But our facilities will compare favourably with any jobber in the city of Toronto for distribution and warehousing facilities.

MR. WICKWIRE: I think it was suggested, Mr. Farr, that if your group had a warehouse and maintained that warehouse for the distribution of cigarettes, that the cost of operating it would have quite a good deal to do with your competitive position with the chain store outlets.

MR. FARR: Mr. Chairman, and Mr. Wickwire we have that laid out pretty well. We will look after that, and Mr. Tilley will not have to worry about it, at all. We have not asked him for credit in any shape or form. We have asked him to deliver a quantity of cigarettes which we order into Toronto, and he would be paid cash for them. He is not going to lose anything through the Toronto Retail Tobacconists Association, I can tell you that.

MR. WICKWIRE: Is there anything further you wish to add?

MR. FARR: Well, those were the two points I wished to mention. They are very important points. The tobacconists up there thought that we should offer that bit of evidence, more or less to let the public know that we are prepared to give them the same

service as the chain stores, if we can get on the proper buying list of the Imperial Tobacco Company.

But the public are saying to us today, "Here, we have it that you are only two-cents difference, and the chain stores can sell them at \$2.99. What is the matter with you fellows?" Well, when you are buying them at \$2.91 it is awfully hard to sell them at \$2.99.

MR. WICKWIRE: Mr. Farr, as I understand the statistics concerning the sale of cigarettes, they are on the increase; there are more cigarettes being consumed each year, is that correct?

MR. FARR: Since I talked with Mr. Abbott, and he reduced the tax about a year and a half ago -- yes; they are on the increase, again.

MR. WICKWIRE: From your own particular experience as a retail tobacconist, how are your own sales?

MR. FARR: Well, our sales are not holding up at the present time. I think we know just where to put our finger on the reason, in the city of Toronto, -- because there is quite a little bit of unemployment up there in Toronto. And it is increasing gradually.

MR. WICKWIRE: My point is --

MR. FARR: And there are a lot of strikes.

MR. WICKWIRE: Are you losing sales to the chain stores?

MR. FARR: Oh, is that what you mean by your question?

MR. WICKWIRE: Or are people smoking more cigarettes?

MR. FARR: No, we are losing a lot of sales to the chain stores, for the simple reason that the small man -- he sells in packages, two or three packages to a customer. That consists of 90 per cent of his sales. If a customer can go and pick up a carton for \$2.99, he is not going to pay 33 cents a pack for two or three packs. So those sales are being denied to us.

MR. WICKWIRE: And I suppose there are a lot of people who are still buying them one or two or three packages at a time?

MR. FARR: Yes, that is true. But most of the tobacconists in the city of Toronto have had to put in other lines to make ends meet. As I said, at one time we had close to 200 members, and it has now dwindled down to 30 or 40 good members. They are changing hands and getting out of the business, because they cannot make a living at it.

THE CHAIRMAN: That has not been all in the last two years, has it?

MR. FARR: I would say it has all been since these cut-rate chain stores came in. A lot of it has been since that time -- I would not say all of it.

THE CHAIRMAN: How much of a drop

from the 200 to the 40 has occurred during the last 18 months?

MR. FARR: I have not figured that out. I think that was shown in our brief, thought. I think if you will look at that brief you will see the figure.

These tobacconists have been in the community for years and years. They have gone through hard times, bad times, and good times together. The customers come in, and if one of them has been sick or is out of work, he is looked after. He is given credit -- and sometimes at a lot of expense to the tobacconist. But these chain stores, when you go in there -- I don't know whether you shop there or not, but if you have a \$10-bill in your pocket, and your groceries come to \$10.02, you will not get by that desk without their taking something out of your basket

The small man has been an asset in the community. It has helped in the community. I think he is the backbone of the nation. I do not see why he should be wiped out by what I call these monsters, today.

They are allowed to carry everything under the sun. Why, a judge in Oakville has ruled that they are department stores, -- and nothing has been done about it. They come under the category of department stores. They started out purely as food stores.

Now, if Mr. Tilley can give to the drug

trade, to Tamblyn's, to the A & P stores, to Loblaw's, to Dominion stores -- if he can give jobbers' prices to all of them, why not to us? I do not know whether you would more or less classify them in the category in which I classify them. But I call them retailers; I do not call them jobbers. They are retailers, to me. And they do not have to procure jobbers' licences.

THE CHAIRMAN: I suppose they would if they sold to any other dealer outside of their own outlets.

MR. FARR: They are retail outlets, and it is to their own advantage that they are purchasing these cigarettes. They are not supplying anybody else in the community. They are deriving the benefit from it. And if they can get those franchises -- and I might say something else on this subject -- and I think I spoke to you about it, Mr. Wickwire -- when I referred to the subway in the city of Toronto. A gentleman came in and got eleven outlets in the city of Toronto and was put on the jobber list. What is the matter with our 25 stores in our organization, if we cannot get on that list?

MR. WICKWIRE: As I recall it, the gentleman about whom you are speaking, was an American, is that correct?

MR. FARR: Yes.

MR. WICKWIRE: And he has the concessions in the subway?

MR. FARR: Yes.

MR. WICKWIRE: And he was put on the (C) list, was he not -- what is known as the (C) list?

MR. FARR: We understand, from sources close to the tobacco industry, that he is on the jobbers' list.

MR. WICKWIRE: Because I think Mr. Tilley explained the other day that his office has no control or say about who gets on or is taken off what is known as the (C) list, but that he does concern himself, and that head office concerns itself, with the wholesalers and jobbers.

MR. FARR: Then I would suggest that Mr. Tilley get out a little more and see what is going on in the tobacco industry. I think it is a deplorable mess at the present time, and I think Mr. Tilley should meet us half way, any way, in this situation.

THE CHAIRMAN: Thank you, Mr. Farr. However, before we conclude, I was going to try to find out the difference that seems to exist between the system of treating retailers as between manufacturers. Do I understand that you are on the direct buying list for Macdonald's?

MR. FARR: Macdonald's and Rock City, yes.

THE CHAIRMAN: But not for Imperial?

MR. FARR: No.

THE CHAIRMAN: There is a distinction

between the way those two companies treat you?

MR. FARR: Yes. I have been told that I have been on the list, many times, to go on Imperial, that I was head of the list many times; but I guess being president of the Retail Tobacconists Association, and fighting for the things we have wanted for such a long time, has dropped me to the bottom of the list.

MR. FAVREAU: How much do you pay for your Macdonald cigarettes?

MR. FARR: \$2.80 per hundred.

THE CHAIRMAN: That is certainly a little better than the \$2.91, anyway.

MR. FARR: Yes, it is a good deal better than \$2.91.

THE CHAIRMAN: I gather you have worked out pretty carefully the cost of operating the warehouse, and the distribution to your stores?

MR. FARR: Yes, we have.

THE CHAIRMAN: And do you estimate there would be a substantial saving if you bought on the jobbers' price list, and handled it through your warehouse -- that there would be a substantial over-all saving?

MR. FARR: Yes, quite a substantial over-all saving.

THE CHAIRMAN: You could operate it at considerably less than the spread between \$2.69 and \$2.91?

MR. FARR: Yes. All we are asking is a break.

And I might add, that we are not for price controls. We do not want that. We want nothing to do with it. We do not want any dictatorship by the manufacturers, in any way shape or form, in our stores. And I think we were the first organization to back Justice Minister Garson on that particular law, when it was brought up.

We are out to operate our own stores, and to look after them properly and, through good business methods, to bring our prices down to where we can meet competition. But we cannot do it if we do not get that break.

THE CHAIRMAN: Have you now 25 members of your association who would go into this?

MR. FARR: We have 25 members, yes.

THE CHAIRMAN: And there has been no change?

MR. FARR: No, there has been no change. And each of those members is willing to put in so much money to start in, right off.

THE CHAIRMAN: So that, really, it is all teed up; all you need is the green light?

MR. FARR: Yes, that is right. We are not going to do Mr. Tilley out of anything, or do the Imperial Tobacco Company out of anything. His money is there for him, and his products will be looked after in the proper manner. I do not see why he has to talk like this before the press, because his letters

talk differently to us, through our legal adviser, Mr. Hunter. I think you will recall that he stated in one letter, there, that there were enough jobbers in the city of Toronto to serve the whole community.

THE CHAIRMAN: And he made some such statement here, too, I believe.

MR. FARR: Well, why are they not able to serve the chain stores,,then?

THE CHAIRMAN: His explanation, as he made it the other day, was that the chain stores were already direct buyers, and that making them jobbers did not affect the position of the existing jobbers, because they were not getting their business, anyway -- that the business was going that way in direct sales to the chain stores prior to the acceptance of the chain stores as jobbers. That was the explanation.

MR. FARR: Well, I don't know whether I am letting the cat out of the bag, or not, but I hear that there **is** a five-package carton to come out from one of the tobacco companies, to replace the ten-package carton, in order to get bigger business from the chains. I am not sure whether it is true or not, but I just have that tip.

THE CHAIRMAN: Then, Mr. Farr, has your association approached other tobacco manufacturers, besides Imperial?

MR. FARR: I think, Mr. Chairman, that the other tobacco manufacturers will cooperate with us, 100 per cent.

THE CHAIRMAN: Could you set up your establishment on the wholesale business for the other tobacco companies, without Imperial being in it?

MR. FARR: Well, we could, but it would not serve the purpose we want it to serve.

THE CHAIRMAN: You do not think it might have some persuasive effect upon Imperial?

MR. FARR: I do not see why he should give it to the chain food stores and the drug stores, the drug associations, and not give it to the real tobacconists who have served the community for years. We are the tobacconists; our livelihood is in tobacco.

MR. WHITELEY: Is it your intention to use only one warehouse if you secure the buying privileges?

MR. FARR: I think the space that we have would be ample space for what we need at the present time.

MR. WHITELEY: That is, one place?

MR. FARR: Yes.

MR. WHITELEY: Would you, then, have to set up a warehouse staff to prepare the orders?

MR. FARR: That is all prepared. But actually, what has that got to do with Mr. Tilley, anyway? The other manufacturers supply everybody

with merchandise.

MR. WHITELEY: Well, he seemed to be very much concerned, in part, at least, as to the possibility that the smaller retailers might purchase in such quantities that they would not get rapid turnover on the product required.

MR. FARR: Oh, that is pure nonsense, Mr. Commissioner. What we have in mind doing, as I told Mr. Smith and Mr. Wickwire in Toronto,-- our 25 members order their stuff three or four days ahead of time, and we place our orders to the Imperial Tobacco Company, and when Imperial delivers it, it is distributed right away. It does not lie in our warehouse any length of time, at all. And we do the making sure whether a man is purchasing over his head or not, or whether he is purchasing a lot of merchandise which would go stale. We know the volume of tobacco business he should do, both in cigarettes and in tobacco.

THE CHAIRMAN: Your main contention, as I understand it, apart from the reference to the 22 cents difference per carton, which works out at the retail level as only allowing your members an eight-cent gross markup, as compared with a 30-cent gross markup for the chain stores, when the selling price is \$2.99 -- but, apart from that, your main contention is that your group of 25 retailers in Toronto, who have

organized the association, have a fully equipped warehouse and the means of distribution by truck, and they are prepared to put in humidifiers to ensure that the tobacco in the warehouse will remain fresh, and they have sufficient volume to be at least equal to what some of the jobbers in existence already have --

MR. FARR: That is right.

THE CHAIRMAN: You say that you should be given the same privileges as have been given to some of the other wholesalers and have been given to the chain stores?

MR. FARR: That is right; that is all we are asking.

THE CHAIRMAN: And, while you have not said it in so many words, I gather from what you have said that you regard it as discrimination against the retail tobaccoists, when they have not been allowed to organize and to have the same privileges as the chain stores? Is that it?

MR. FARR: I am afraid, sir, that I did not follow your question.

THE CHAIRMAN: I say, do you regard it as a species of discrimination against the small tobacco retailer, when the manufacturers, or the divisional managers of the manufacturers will not place them on the same footing as the chain stores, when they are organized for that?

MR. FARR: I would say there is some form of discrimination, when we cannot be

placed in the same category as chain stores, and other different types of outlets getting jobbers' prices, especially when we are dealing in that particular kind of business. It is our livelihood, and we need it. We know that business.

MR. FAVREAU: What would be the eventual fate of the present wholesaler in Toronto should that new system of collective buying be established eventually in a permanent fashion?

MR. FARR: Well, when Mr. Justice Garson brought down his law with respect to no retail price fixing, it was for the purpose of giving the purchaser a better deal in buying; and that is my idea, too. If the jobber goes -- well, that is not my fault.

MR. FAVREAU: I suppose the eventual effect would be that some jobbers would have to go?

MR. FARR: Yes, certainly; we would have to buy a certain amount of supplies from them; but I cannot speak for the jobbers in that way.

MR. WICKWIRE: Then, I think that is all we have to ask Mr. Farr.

THE CHAIRMAN: Thank you Mr. Farr. We have the case pretty well before us now, I think.

--- Recess.

REPRESENTATIONS:

Retail Merchants Association of Canada
(Saskatchewan) Inc.,

- and -

The National Foods Division of the Retail
Merchants Association of Canada, Inc.:

Represented by:
And accompanying Mr. A.A. Shelly, in the
presentation of the brief:

Mr. F.A.B. Rands, National Secretary of the
Retail Merchants Association of Canada, Inc.;
National Secretary of the National Foods
Division of the Retail Merchants Association
of Canada, Inc.;

Mr. L.B. Brault, (For three years, until
June, 1954) National President of the
National Foods Division, Retail Merchants
Association; also President of the Foods
Division of the Retail Merchants Association,
for the Province of Quebec;

Mr. C.A. Majeau, Provincial Secretary of the
Retail Merchants Association of Canada,
Quebec Division; and Provincial Secretary
for the Province of Quebec of the Foods
Division of the Retail Merchants Association
of Canada.

THE CHAIRMAN: Then, we will now revert
to the brief we were considering at the adjournment
yesterday afternoon. Mr. Shelly, are you ready to
proceed?

MR. SHELLY: Mr. Chairman and gentlemen,
yesterday in my opening remarks I referred to
some jurisdictional confusion, and indicated
that today we would have with us Mr. Brault who
would clarify that situation. And, if we might
do that now, I should like to proceed.

THE CHAIRMAN: Well, first of all,
will you please give us his name and position.

MR. SHELLY: Yes, it is Mr. L. B. Brault of Cowansville, Quebec. I might say that Mr. Brault, until late June, was National President of the National Foods Division of the Retail Merchants Association, which office he held for three years. He also has been, for five years, president of the Foods Division of the same association for the province of Quebec.

We also have with us this morning, in support of this presentation, Mr. C. A. Majoau of Montreal, who is provincial secretary of the Retail Merchants Association of Canada, Quebec Division, which is a self-autonomous body; and he is also provincial secretary for the province of Quebec of the Foods Division of that association. I would ask Mr. Brault to speak, Mr. Chairman.

MR. BRAULT: Mr. Chairman and gentlemen of the Commission, I have been connected with the food business for quite a few years, and I was very much interested in the few remarks of Mr. Farr a few moments ago. And if I may be permitted by this Commission, I should like to make a few remarks before I talk about the Retail Merchants Association, due to the fact that Mr. Favreau mentioned the new cooperative buying.

If he would allow me, I would like to bring some light to this Commission on what is existing at the moment in the province of Quebec

on this same subject. This might give you some additional light on what Mr. Farr has said. And, due also to the fact that Mr. Favreau said that it was a practically new policy.

THE CHAIRMAN: Well, we would be very interested, but I hope it will not take too long, because we have a very full program today.

MR. BRAULT: It will not take long. Mr. Favreau has said that it was something new. Well, I was about to say that this organization of group buying is twelve years old in the province of Quebec.

MR. FAVREAU: Oh, I did not wish to leave the impression that I knew all about the whole cooperative system in Quebec. All I said was that if this particular organization, which does not exist yet, was set up, that would be one additional one. That is the only way in which I used the word "new".

MR. BRAULT: All I wish to say is that even if in Quebec it is twelve years old, they are still refusing to sell cigarettes to those groups. That is all I wish to say about that.

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I represent here today the National Foods Division of the Retail Merchants Association. I understand that a brief by the Retail Merchants Association was presented to you last Tuesday, and from the discussion that took place those who were presenting the brief might have

led you to believe that it was covering food in the most extensive way.

I might say immediately that I am French speaking, and if I do not use the proper words always in English, I would like to have the advantage of saying them in French. Because sometimes it is hard for a person who speaks French to express himself freely in English.

THE CHAIRMAN: You are doing remarkably well up to now. But I might say that, from the point of view of the Commission, it was made clear to us last Tuesday that the speaker presenting the brief was not speaking for either the Retail Merchants Association of Canada (Saskatchewan) or for the National Foods division.

MR. BRAULT: That he was not, do you say?

THE CHAIRMAN: He said that the National Foods Division of the Saskatchewan Retail Merchants Association were outside the brief.

MR. BRAULT: The Foods Division?

THE CHAIRMAN: He said that the National Foods Division had approved the proposals which were coming from, or which had already been presented by the Saskatchewan Retail Merchants Association.

MR. BRAULT: But I understand that in the discussion you might have been led to believe that in their brief they were presenting

at that time, that it was mostly on the foods question. I would not like to have split views among the association, naturally, on that question, because I took part in both. And I would like to establish here the jurisdictional part of the National Foods Division.

The Retail Merchants Association was organized in 1910 under Chapter 156 of the Revised Statutes of Canada. And in their bill it gave the association authority to appoint committees, and their duties.

The Foods Division was organized six years ago within the R.M.A., with special functions and special duties. And at the last meeting in June at Edmonton the Foods Division made very sure of that by asking the dominion board of the Retail Merchants Association of Canada to pass a resolution defining exactly the duties and responsibilities of the Foods Division, which reads as follows, as it is set out in the minutes of that meeting:

Be it resolved that the finances of the National Foods Division be placed wholly in the hands of the officers of the National Foods Division, and that coincident with the transfer of finances of the National Foods Division, that the National Foods Division be given freedom of action in conducting its affairs;

that the dominion association give full authority to the signing officers as appointed by the National Foods Division from time to time to transact business in the name of the Retail Merchants Association of Canada, National Foods Division.

At the National Foods meeting which took place two days before the dominion board meeting, a resolution was passed on the loss leader question, as set out in the minutes here, as follows:

Moved by Mr. Reid, Toronto, seconded by Mr. Hazlett, Edmonton, that we recommend the Saskatchewan brief to the dominion board, being that it is acceptable to us as a food brief, and we suggest it be studied well by the committee of the dominion board.

At the meeting of the Retail Merchants Association, which was held two days later, the following resolution was passed and carried:

It was moved by Mr. W. C. Mainwaring of British Columbia and seconded by Mr. A. J. Fairbairn of Alberta that this association prepare a brief for presentation to the Restrictive Trade Practices Commission at a time yet to be set by

the Commission, it being understood that inasmuch as Saskatchewan and British Columbia were submitting drafts, the reaction to their briefs be carefully studied by those preparing the ultimate brief.

At this point Mr. Shelly expressed Saskatchewan's views on the brief that the province was submitting to the Commission. Mr. Shelly explained this brief was on behalf of foods. Delegates present endorsed the Saskatchewan brief.

These are the only things I wish to bring before the Commission at this moment. Officially, the National Foods Division of the Retail Merchants Association of Canada has supported Mr. Shelly's formula.

THE CHAIRMAN: Thank you.

MR. GERIN-LAJOIE: I have a question or two I would like to put to Mr. Brault regarding the approval of the retail foods division. I wonder if you would prefer that I ask those questions now, or after Mr. Shelly has concluded his presentation?

THE CHAIRMAN: I think the proper time would be now, when we are dealing with this particular point.

MR. GERIN-LAJOIE: Would you be so

kind as to let me have, to facilitate my questioning, the text of the two resolutions you have just referred to.

MR. BRAULT: Yes, I will hand them to you.

MR. GERIN-LAJOIE: Now, I understand from the resolution you read a moment ago to the Commission that the National Foods Divisions of the Retail Merchants Association of Canada at its meeting held in Edmonton on June 22 and 23, 1954 -- that the division recommended the Saskatchewan brief to the dominion board "As it is acceptable to us as a food brief"; I would like to know if the Board had before it at that time the brief of Mr. Shelly, or should I say the brief of the Saskatchewan group, as mentioned here; or did you have a verbal exposition of the substance which was intended to be put into the brief?

MR. BRAULT: The brief was in the hands of -- I cannot tell you how many people -- but I know it was in the hands of the executive of the National Foods Division quite a few days before the meeting.

MR. GERIN-LAJOIE: Yes?

MR. BRAULT: And it was read and studied at the meeting.

MR. GERIN-LAJOIE: And could you tell the Commission if the brief to which you referred is the brief which was being presented to the

Commission yesterday and today, or if it is another brief which was submitted to the Commission at its Saskatoon meeting last June?

MR. BRAULT: Would you permit me to see the brief presented to you first -- not the second one. I would like to see the first brief. Would you permit me to see that, please? This is the one -- this first brief presented to you is the one that was studied at the meeting, and accepted. That is the one that the resolution which you have before you covered.

MR. GERIN-LAJOLIE: I think that is all I wish to ask, thank you.

MR. FAVREAU: Before Mr. Shelly resumes, may I ask a question of Mr. Majeau. I understand you appear here strictly in your capacity as provincial secretary of the Foods Division?

MR. MAJEAU: Yes.

MR. FAVREAU: Of the R.M.A.?

MR. MAJEAU: Yes.

MR. FAVREAU: And I understand also, from a letter received from you on September 10, 1954, that the Retail Merchants Association of Canada, Quebec Section, as a whole -- not as the foods division -- but as a section of the R.M.A., endorses the brief as presented by Mr. Keith, is that correct?

MR. MAJEAU: Yes.

THE CHAIRMAN: Then, Mr. Shelly, you may proceed. We are gradually getting to

understand the Retail Merchants Association, and its autonomous divisions.

MR. BRAULT: I would like Mr. Majeau to enlarge a bit on what he has just said, in order to bring light to the situation in Quebec.

MR. FAVREAU: If there is anything that has not been elucidated, please do so.

MR. MAJEAU: If I understood the question well, you asked me, Mr. Favreau, if it was right that the Quebec R.M.A. as a whole --

MR. FAVREAU: As a whole, yes.

MR. MAJEAU: -- was accepting the brief of Mr. Keith. And I answered yes.

MR. FAVREAU: And you are here present now in your capacity as secretary of the Foods Division?

MR. MAJEAU: Yes, of the Foods Division.

MR. FAVREAU: As far as Quebec is concerned?

MR. MAJEAU: Yes. That was not for foods, of course. In the province of Quebec we have exactly the same setup, the Foods Division being the same association, and it is to a certain extent autonomous.

THE CHAIRMAN: Yes, you may proceed now, Mr. Shelly.

MR. SHELLEY: We left off yesterday at page 12, near the bottom of the page. I will continue with the brief, as follows:

CLARIFICATION RE INVISIBLE DIFFERENCES.

A little earlier, Mr. Chairman, I referred to a brief submitted to the Commission by the Safeway Company at Vancouver on July 6. We appreciate that this brief was submitted on the invitation of the Commission. Since said brief constitutes a very comprehensive and analytical submission, it undoubtedly will serve in considerable measure as reference material. We therefore deem it important to our cause that where there is risk of a distorted impression being left with the reader of ~~that~~ submission the points in question should frankly be aired and clarified. We accordingly take the liberty to comment and add pertinent information in the hope that it may be helpful to the Commission in its present purpose.

The Safeway submission includes considerable emphasis concerning the fact that new innovations and improvements constantly contribute to ever lower retail food prices and that no end is in sight with respect to this trend. We fully agree with this and would point out that, as D.B.S. figures prove, this trend is industry wide and is not peculiar to any one operator. We could point to instances where some part of the Safeway operation

is more efficient than the corresponding part of some other operator and conversely we could point to instances where the reverse applies. At any rate, it is a healthy general trend.

Sometimes invisible differences in accounting and operational practices account for seemingly wide discrepancies in gross margin or expense percentages of similar operations. We have some comment to make in that regard. Then, too, some of the Safeway schedules do not contain adequate explanation and when used for quick reference could leave an erroneous impression. For instance, the average markup figure of 16 per cent as quoted on page 2862 does not include the cost of warehousing (ref. p. 2972). The same must be said for the markup figures appearing on page 2939 (ref. p. 2862). On the other hand,,the 1954 margin figure of 16.4 per cent on page 2889 does include the cost of warehousing (ref. p. 2971).

SAFEWAY OPERATION SUBSIDIZED.

We feel that this matter of comparative margins should be clarified. Take Loblaws for example -- their gross margin and also their expense may look high, but then, it represents the combined warehousing and

retail functions. Dominion Stores on the other hand,,because of embracing a much larger geographical area, can not service all of their retail units from their own warehouses and therefore make some purchases from wholesalers. This relieves them of certain distribution expense on the one hand but it also reduces the gross margin because the wholesaler has taken some of it. Neither Loblaws nor Dominion are engaged in the business of selling at wholesale to other retailers. In the case of Safeway we have a quite different picture and this situation was not adequately explained in their brief. Safeway operates numerous combination wholesale grocery and produce houses which serve as supply base for adjacent Safeway units and which also conduct a typical wholesale business in that they sell to independent grocers to the tune of many millions of dollars annually. This division is operated in the name of MacDonalds Consolidated Ltd. They carry the usual range of groceries, tobaccos and cigarettes, fresh fruits and vegetables and allied lines. These wholesale houses, in their respective districts, are under the same Divisional Managers as are the Safeway units. As stated by Mr. MacAuley on page 2860, the

Divisional Manager is supreme in his own division. These divisional managers are equally familiar with and responsible for both the wholesale and retail operation. Now it is not unimportant to record that in areas where such Safeway-MacDonald wholesale houses are operated the Safeway units are subsidized by the independent grocers who are supplied by that wholesale house. This is so because whereas the Safeway units are supplied on an extremely low markup basis an entirely different higher price structure governs sales to independent grocers.

I will interject there that we saw an example of that in British Columbia, as their brief incidentally brings out. Because on cigarettes to Safeway -- the cost of cigarettes to Safeway is \$2.69, but their wholesale price to the independent grocers is \$2.80, and perhaps higher than that. Mr. Kraft at the moment was not sure. Then, to continue with the brief:

The Safeway units do not bear the real cost of the distribution service performed for them. Therefore the Safeway margin of 14.7 as shown in their brief is a subsidized figure. We suggest that this information is quite relevant to the subject of the Safeway brief.

DISCRIMINATION NOT REVEALED

We were surprised, Mr. Chairman, upon reading pages 2973 and 2974, that Safeway officials disclaim knowledge of the buying position of independent grocers, when they themselves are one of the principal suppliers of independent grocers and serve many hundreds if not indeed thousands of them in Western Canada. An examination of the operation of these Safeway-MacDonald houses would bring out very revealing information concerning the discrimination practised by Safeway against independent grocers.

Such discrimination against independent grocers carries back even to the processor level of the Safeway organization. As is well known, Safeways control fruit and vegetable canneries, a jam and marmalade plant, a tea and coffee plant and some other plants. The products of these plants are sponsored through Safeway stores, but in addition many of them are vigorously promoted through their Safeway-MacDonalds wholesale division to independent grocers. Now here in this 4 page Safeway advertisement in the Calgary Herald of June 14 we see how these Safeway processing plants deliverately undermine the position of independent grocers by enticing consumers

to purchase such sponsored brands at Safeway, in the hope that the so-called SAFEWAY MONEY MAN will ring their door bell and present them with a shining 25-cent coin for each and every one of these numerous items found to be on hand in their household.

I referred to this at Saskatoon, but I have a reason for bringing it out here, and that is why I bring it out again.

THE CHAIRMAN: Is that advertisement already on file?

MR. SHELLEY: Yes, it is. To continue:

There is a string attached to this sparkling offer -- a Safeway cash register receipt, verifying that a purchase had been made at a Safeway store between specified dates, must be shown. At the bottom of the first page of this four-page advertisement appear these significant words in brackets-- "MANUFACTURERS OFFER". Here it is clear that had this promotion not been sponsored by their processor level, Safeway would have contravened the Alberta 5 per cent loss leader law. We have no knowledge of these Safeway processing plants ever sponsoring a MONEY MAN through or on behalf of the independent grocers through whom they merchandise most of these same items. These independents evidently are the FORGOTTEN MEN, so far as

the SAFEWAY MONEY MAN is concerned.

IS IT A LOSS LEADER WHEN A RETAILER
REBATES \$4.00 ON A SALE OF \$2.79?

We have not attempted to assess as to whether or not in this Calgary instance any of these sponsored items were offered at loss leader prices, under whatever definition, but the point we want to register is that there is very definite discrimination here. It is opportune to say, too, that the question of how many items may be involved in any one loss leader promotion is not, in itself, of too great significance. In this instance, these sponsored brands totalled 12, plus 4 different varieties of their private brand of bread. In any event, a shining quarter was in prospect for every such loaf of bread and for each of the following -- Sugarbelle Blended Peas -- Taste Tells Corn -- Taste Tells Wax Beans-- Taste Tells Green Beans -- Taste Tells Beets -- Taste Tells Carrots -- Country Home Corn -- Sugarbelle Peas No. 4 -- Townhouse Grapefruit Juice -- Blend O'Gold Blended Juice -- Penthouse Asparagus -- Yarrow Raspberries. It is significant that of all these items only one, namely Asparagus, had a unit value of over 25 per cent. All of the other items were priced at less than 25 cents and down as

low as 9-1/2 cents. At the advertised prices, taking one unit of each of these 16 items, we arrive at a total value of \$2.79. Yet, if one of each was on hand, plus the qualifying Safeway cash register slip, and the SAFEWAY MONEY MAN called at this door, he would leave 16 shining quarters at that household, in other words four dollars.

EVEN ONE OR TWO LOSS LEADER ITEMS CAN BE VERY DAMAGING.

Now as already intimated, the significance of loss leader selling is found not so much in the number of items used as it is in -- the items selected for the purpose -- the total number of items handled by that store-- the scope or prominence of that retail operator and the impact of his advertising or other technique used in the promotion. Even the ingenious use of one or two carefully selected items may make a terrific impact.

I will have an example later on, where I deal particularly with two items, which had a terrific impact, and they were not even advertised.

SWEEPING STATEMENT GROSSLY MISLEADING.

Again Mr. Chairman, speaking of discrimination and inconsistencies, we must return to the Vancouver cigarette situation. Mr. MacAuley, in speaking of the Safeway

price of \$2.95 per carton says in part on page 2893 -- "What is more, to require any higher retail markups on cigarettes, hence higher prices to consumers, would deprive those customers who choose to buy their cigarettes at Safeway of the benefits of an efficient retailing system." Let us examine whether this sweeping statement was justified in the light of Safeway - MacDonalds performance elsewhere. These cigarettes are supplied to Safeway stores and to independent grocers across western Canada through the same Safeway controlled warehouses -- although admittedly independents are not served through a smaller number of them.

It is just a very small number of them who do not supply the independents. Then, to continue:

The delivered cost of these cigarettes is the same at all of these warehouses. It is \$2.69 per carton. And Mr. MacAuley has made it quite clear that the cost to Safeway units likewise is \$2.69. Mr. Kraft, on page 3005, says the Safeway-MacDonalds price to some independents in Victoria is \$2.80 and to some perhaps more, he was not sure at the time. In Saskatchewan the Safeway-MacDonalds price

to independent grocers is \$2.91 -- just 4 cents below the Safeway retail price in Vancouver. In Alberta and Saskatchewan the Safeway retail price of \$3.09 shows a retail margin to Safeway 54 per cent greater than that realized by Safeway in Vancouver at the \$2.95 price. Is this the measure of the difference in efficiency as between Safeway Vancouver and Safeway Alberta and Saskatchewan? We say again, Mr. MacAuley was not justified in making the sweeping statement that he made. We are very much concerned with discrimination, Mr. Chairman, whether it be directed against independent grocers or consumers.

UNPREDICTABLE SAFEWAY MARKUPS CAN NOT
SERVE AS YARD-STICK.

Earlier in our brief we developed at some length the point that it was next to impossible to establish scientifically what amount of the cost of doing business might properly be attributable to any one given item. By the same token, it is next to impossible to determine scientifically exactly what markup should properly be applied to any one given item. Pages 2852 to 2874 of the Safeway brief recite in considerable detail the different factors and considerations that enter into selection

of whatever markup should apply to this or that given item. The point is made that aside from these factors and considerations traditional pricing practices as well as competition play their part in the markup pattern. This subject was quite fully aired during the question period as reported on pages 2954 to 2967 specifically and when questioned concerning the extent to which Safeway could actually assess the profitability of individual items Mr. Kraft replied in part -- (Ref. pages 2963-4) -- "I do not believe I can answer that one; and I do not know, with due respect to everyone here, or elsewhere, if anyone else could answer it. I do not know if any grocery store, where 2,900 items are handled -- if in that store it is actually known how much it costs exactly to handle each specific item". In other words, it was agreed that in the final analysis it is a matter of opinion -- a matter of judgment -- and so we say that in the case of a company one would think that there should be some reasonable degree of consistency to such opinion or judgment. We know what that opinion or judgment was on cigarettes in Vancouver. We know what it was in Saskatchewan -- or do we? No, Mr. Chairman, I can tell you that in Saskatoon it was not Safeway who reduced the price to

\$3.09 after retail price maintenance was removed from cigarettes! We have a very special reason for developing this point, Mr. Chairman. We respectfully caution the Commission against accepting markups shown in Safeway schedules as being reasonable, representative or typical. In considerable degree, the best that can be said for some of them, is that they truly reflect the practice of juggling for which this company is noted. Let us give you a few typical examples.

<u>Page</u>	<u>Item</u>	<u>Size</u>	<u>Markup</u>
2942	Soap Flakes, Ivory	large	15% - not incl. warehousing
2946	Soap Flakes, Ivory	large	6½% - not incl. warehousing
2944	Corn, Cream Choice, Taste Tells,	15 oz.	20½% - not incl. warehousing
2946	Corn, Cream Choice, Taste Tells,	15 oz.	7% - not incl. warehousing
2941	Butter, Creamery 1st grade	1 lb.	5¼% - not incl. warehousing
2946	Butter, Creamery 1st grade	1 lb.	9% - not incl. warehousing

We say Safeway pricing practices are unpredictable.

THE CHAIRMAN: Do these prices as quoted refer to particular units?

MR. SHELLEY: The two different markets, Vancouver and Winnipeg. Then, to continue:

Our purpose in drawing attention to it here is simply to register the point that our recommended 5 per cent and 10 per cent wholesale discount provisions included in our proposed formula should not be regarded as inappropriate on the grounds of markup figures contained in Safeway schedules. We respectfully submit that D.B.S. schedules would be a much more appropriate yardstick to use. We would point to a significant inconsistency too. On page 2893 Mr. MacAuley speaks of a 26-cent margin on cigarettes, which represents the full difference between the delivered factory price to the wholesaler and Safeways retail selling price of \$2.95. But here on these Soap Flakes, Canned Corn and Creamery Butter we must remember that quite apart from the respective retail markup figures shown opposite these items there also was in addition a separate warehousing markup taken, the amount of which we do not know. But certainly this warehousing cost on these items is significantly more than the 2 per cent casually referred to in the second last paragraph of page 2972 and for this reason-- this so-called roughly 2 per cent purportedly is related to total Safeway retail sales -- which is an inaccurate accounting procedure since a great deal of the merchandise

retailed by Safeway never passes through the Safeway-MacDonald warehouses. We think of such items as meats, bakery goods, soft drinks and many others which traditionally are delivered directly from the respective processing and manufacturing plants to each individual retail unit. Therefore, if this warehousing figure equals roughly 2 per cent of total retail sales of Safeway stores then it amounts to a substantially greater figure when properly related to the merchandise actually handled through the distributing warehouses. This warehousing markup, whatever it may be, must be borne in mind when thinking of a 6-1/2 retail markup on soap flakes, etc., which tells only part of the story, at least if we want to be consistent with the cigarette treatment.

MR. WHITELEY: Before you leave that paragraph, about a third of the way down on page 18, you refer to D.B.S. schedules.

MR. SHELLY: I should not have used the word "schedules" it should be D.B.S. figures.

MR. WHITELEY: Which ones did you have in mind?

MR. SHELLY: I do not know how to identify them, exactly -- but the D.B.S. does issue information on markups.

MR. WHITELEY: By commodities?

MR. SHELLY: Not by quantities.

MR. WHITELEY: No, by commodities?

MR. SHELLY: Oh yes, surely, by commodities.

I am quite sure they do, although I have not checked that.

MR. WHITELEY: The only ones we have had drawn to our attention are operating figures for a cost of business -- in other words, retail grocery stores, or something like that.

MR. SHELLY: Well, Mr. Chairman, I would like to admit that I have not checked on that. But in preparing this I was thinking back to the days when I was with the Wartime Prices and Trade Board and we had that information available. And I am quite sure it came from D.B.S.

MR. WHITELEY: I just wanted to make clear what reports you had in mind.

MR. SHELLY: Yes, well, I cannot identify them, but I am confident D.B.S. would have that information.

MR. WHITELEY: The only ones we have had drawn to our attention are those operating reports by cost of business. But we have not had drawn to our attention any markups by commodities.

MR. SHELLY: Then, that is something I shall have to verify. Then, to go ahead with the brief:

WIDE AREA OF AGREEMENT.

While we have deemed it necessary, Mr. Chairman, to point to certain phases of the Safeway brief that bear further study, and also raised some questions concerning certain discriminatory practices, we should also like to say that there are wide areas of agreement. We list below a summarization of the kind of things we are opposed to and which we believe are compatible with the Safeway brief.

1. We are opposed to so-called **retail** price maintenance.
2. We are opposed to so-called floor prices and minimum markups.
3. We are opposed to imposition of uniform markups, which are entirely impracticable.
4. We are opposed to any measure that will hold an umbrella over the inefficient.
5. We are opposed to any law requiring retailers to take larger profits.
6. We are opposed to any measure that is prejudicial to the interests of primary producers and consumers.
7. We are opposed to any measure that would interfere with the freedom of retailers to assist with the effective disposal of farm surpluses through

application of smaller retail markups.

8. We are opposed to any measure that would have the effect of depriving consumers of the full benefits of any economies arising from new innovations and techniques applied at any level, including wholesale and retail.
9. We are opposed to any measure which in its effect discriminates against any class of retailer within any given trade classification.

LOSS LEADING IN CENTRAL CANADA AS A
MATTER OF OPERATING POLICY.

If we seem to dwell a lot on the Safeway brief, Mr. Chairman, it is because we find wide areas of agreement in it as well as certain areas of difference. We believe that it should be helpful to the Commission to know the reasons for any such differences. But before further drawing on the Safeway brief I should like to relate to you the gist of a casual friendly discussion I had with a substantial food chain operator of so-called central Canada, which took place subsequent to the June 29 hearing at Saskatoon. We got on the subject of the Saskatoon hearing and he, in effect, said this to me -- "You know, the rapid growth and increased profits in my company can

"be attributed to loss leader selling. I usually pick about four good items, a key meat item, a key produce item and a couple of key grocery items, cut the heart out of them and keep pulling in more and more people into our stores. I make no attempt at keeping competitive across the board and despite my loss on loss leaders I come out with a satisfactory and profitable gross." Now this operator is frank and above board about his loss leader selling and he makes no bones about admitting that he makes up the loss taken on loss leader sales on other items. This is a very substantial operator and his competition would affect many hundreds of other food retailers, both independent and chain. This operator has been successful with this loss leader device since his competitors, generally, have not retaliated in kind. Yet, he realizes that things will not continue this way indefinitely. We see here, incidentally, Mr. Chairman, that while consumers gain nothing from such loss leader operating policy, it does create confusion in their minds and builds up a false sense of values.

THE CHAIRMAN: What do you mean by the expression "while consumers gain nothing."

MR. SHELLY: The proof of it is this, that this particular operator has improved his sales position and his profit position, which could only happen in one way. He had to sell more profitably. Therefore the loss that he took on his loss leader items was more than made up as a result of the overall price structure that he observed.

THE CHAIRMAN: Would that necessarily mean that the rest of his stock was priced at a higher level than it would have been, if he had not had this loss leader?

MR. SHELLY: Oh yes.

THE CHAIRMAN: Well, I do not think it follows. A merely greater volume on the rest of his sales surely would cut down his overhead per dollar of sales, and thereby make a greater profit.

MR. SHELLY: I will answer it in this way, that he was not attempting to be competitive across the board.

THE CHAIRMAN: That still does not mean that he made any change in the prices which he would have charged on the balance of his commodities.

MR. FAVREAU: It may well have reduced his average markup. But if it has increased his turnover, it must have increased his profit.

MR. SHELLY: Perhaps I am not answering the question directly. But my point is this,

that had he not followed the course of offering these loss leaders he certainly would have had to be pretty competitive across the board in order to have a satisfactory volume of business. That I think, in practice, is the important thing.

THE CHAIRMAN: It seems to me that the public would gain whatever savings were on these loss leaders, and they might not necessarily lose anything on the balance. It is difficult to say.

MR. SHELLEY: I can see your point, but I do not think there is any way of proving the point. Then, to continue:

I might say too, Mr. Chairman, that this operator was not perturbed by the prospect of having our type of formula translated into law. His casual reaction was that it was a constructive proposal. I am sure he will readily adjust himself to such a change. I believe that can be taken as a typical reaction of Canadian food retailers generally. Safeway, with headquarters in California, of course, may be an exception. But we have no doubt that Safeway would experience no particular difficulty in likewise adjusting themselves to such more or less voluntary discipline.

A STORY OF STEAM-ROLLER CONQUESTS.

We believe, Mr. Chairman, that in order to understand the probable basis for Safeway objections to any effective loss leader measure, one has to know something of their background and aspirations. They have, in a few short years, become the second largest food chain on the North American continent-- which is the same as saying, the second largest food chain in the world. They entered Canada in 1929, which I recall very vividly. At that time, when reviewing their astounding progress of the previous year, their President, Mr. M. B. Skaggs, reported to their stockholders in part as follows:

"During the year 1928 your company, through its operating subsidiaries, opened 201 grocery stores, and 177 meat markets were also installed. During the same period the following additions of existing units were made:

In February, the Arizona Grocery Company and its subsidiary, Pay'n Takit Stores, with 24 grocery stores and 24 meat markets, operating in Phoenix, Arizona, were acquired:

In June, the Newway Stores, operating 15 grocery stores and 11 meat markets in El Paso, Texas, and vicinity, were acquired.

"In November, Sanitary Grocery Company, operating 429 grocery stores and 67 meat markets located in the City of Washington, D.C., and vicinity, was acquired. These stores include 49 Piggly Wiggly self-service stores and meat markets in Washington, D.C., and vicinity, and 46 grocery stores located in Richmond, Virginia.

In November, Eastern Stores, Incorporated, operating 67 grocery stores and 12 meat markets in the City of Baltimore, Maryland, and vicinity, under the name of Knoblock Brothers, was acquired.

In November, the assets of the Piggly Wiggly Pacific Company, operating 91 grocery stores and 84 meat markets in Oakland, California, and vicinity were acquired.

In December, the stores formerly operated by Bird Grocery Stores, Incorporated, consisting of 224 grocery stores and 210 meat markets, under the Piggly Wiggly system located in Kansas City, Missouri, and in various other cities and towns in the states of Missouri, and in various other cities and towns in the states of Missouri, Texas, Arkansas, Iowa and Kansas, were acquired:

"In January, 1929, the company acquired through an operating subsidiary the assets of Sun Grocery Company, operating 50 stores located in Tulsa, Oklahoma, and vicinity. In February, 1929, the Company acquired the assets of Piggly Wiggly Western States Company, operating 174 stores in Los Angeles, California, and vicinity, and 14 stores in Salt Lake City, Utah. More recently the Company entered the Canadian field with the acquisition of nine grocery stores and options on 19 additional units in Vancouver, B.C. This is the first step in an expansion program in the Dominion.

The Company, through its subsidiaries, is now conducting its activities in twenty of the States, the District of Columbia, and the territory of Hawaii.

In the expansion program of the Company during the past year, both through purchase and opening of new units, the ability to continue along the lines of our past success has been a fundamental consideration. We believe that the operating personnel of the Company has kept pace with the growth of the Company, that the conditions in our territory are such that we shall continue to progress

"and that, all in all, the prospects for the coming year are very favorable."

I would like to interject that a day or two ago Mr. Staples of the Cooperative Union made a presentation here, and if I heard him correctly he was impressing the Commission with the immensity of the cooperative movement in Canada. I think he said that sales last year of the cooperative movement in Canada amounted to \$1,500 million -- which is a tremendous accomplishment. I would just like to interject here that the sales of the Safeway company last year were \$251 million greater than those of the entire cooperative movement in Canada. Incidentally, \$2,800,000 -- that is Canadian dollars -- were sent across the border by way of dividends from the Canadian division for the past fiscal year, to the Safeway company headquarters.

I have the official information on that here. This appeared in the press just a few days ago:

Net sales of Canada Safeway Limited during the first 24 weeks of 1954 totalled \$69,605,570, an increase of 7.1 per cent over the net sales of \$65,008,991 in 1953.

So it is still going up. Then, to continue:

This, Mr. Chairman, is the story of early Safeway history and aspirations. It is not unlike manifestations that we see on the world wide international scene today. Since that day in 1929, when President M.B. Skaggs gave this lucid report, the Safeway organization, in a relatively short period, has become the second largest food chain in the world. The spirit of new conquests remains very much alive and undoubtedly Safeway headquarters feels that any measures enacted which could in any way effectively restrict the ingenuity of Safeway practices might stunt their rapid growth. As we have seen on page 2955, and quoting Mr. MacAuley-- "We just do what we are told -- the President of the Company tells us what to do." Undoubtedly their President has told Mr. MacAuley to resist any and every kind of effective loss leader measure. We can assume, Mr. Chairman, that in their home country too, the Safeway company must have opposed the many different measures that have come into being and, while they have had to adjust themselves to these measures, Safeway still are operating successfully and forging ahead. We predict that the same would hold true in Canada, for the measures that we propose are no less for their protection than for that of Canadian retailers and consumers.

178 THE CHAIRMAN: We had better have a short break now, I think.

--- Recess.

--- Upon resuming.

THE CHAIRMAN: You may proceed, Mr. Shelly.

MR. SHELLEY: The brief continues:

FARM POPULATION AND URBAN MOTHERS DIS-
CRIMINATED AGAINST.

In Western Canada, Mr. Chairman, our chief basic industry is agriculture, and that of course also applies to other important and sizeable areas of Canada. A large part of our population lives on the farm. Many of these people make only one shopping trip per week, a good many even less frequently. I think no class of consumers is so adversely affected by discriminatory pricing practices as are our rural people -- although admittedly many an urban housewife, tied to the home with small children, is in a similar boat with her farm sister in terms of frequency of shopping tours. I recall very well, thinking back to the days when even food chains provided so called free delivery service to urban folk, how the farm folk admonished us and said -- "Why

"do we farmers have to pay, in the price of the goods we buy, for this costly delivery service provided free to the urban folk?" Well, that particular type of discrimination is pretty well past history, but today we have a different form of discrimination which is no less objectionable to the rural folk and to the urban mothers who are tied down to their homes. We are speaking here, Mr. Chairman, of price juggling practices which, aside from often being in the class of vicious loss leaders, have the effect of discriminating most unfairly against the mentioned categories of consumers. In addition, they are a real source of annoyance to any and every classification of consumers as can be appreciated when one thinks of the housewife who discovers that her neighbour paid a dollar less, or a dollar more, as the case may be, than she did for the same article in the same store. Here are some typical examples to illustrate the point.

DEVIOS DUBIOUS DEVICES - CAREFULLY
CONCEALED FROM COMPETITORS.

"You shop in a unit of this International chain and when you unpack your purchase at home you find an insert, or coupon if you like, which has a stated value toward the

purchase of a specified item, valid only in that store the next day, or perhaps the day after. (We are not speaking of manufacturers coupons, such as soap coupons etc.) Now this farm customer, or urban mother, perhaps is deprived of the opportunity to benefit by this offer -- she cannot so soon rush to the store again -- and it therefore discriminates against her. But it has had its propaganda value of identifying that store as the store with better values -- which obviously is the purpose of this device. Now this device also discriminates against regular customers of that store who had no opportunity to receive such slip or coupon since they failed to shop on the particular day when this insert was included with the purchase of at least some customers, if not all. So some of these customers happen to shop in that store on the day when the coupons are valid but not knowing about them they too miss out and pay the full price for the item. Of course, the few who do make the extra trip to that store on the specified day do enjoy the bargain. Now if a Government questionnaire happened to come along for completion that day this price cut of course would not show up -- technically the price had not been cut -- however, a coupon had been issued which

was equivalent to a price cut. That coupon value might have represented 25 per cent or even more of the price of the item. Another discriminatory aspect of this device is that it did not apply to all units of this chain in this city. Under our formula, Mr. Chairman, competing retailers could buy from this chain at such price, less coupon value, less 5 per cent or 10 per cent whole-sale discount, and compete.

I will just show a sample of this kind of procedure. This is the sort of thing that is happening in Saskatoon at the present time, and it is a very important thing with us. Here is one, "Spafeway offer, this coupon worth 15 cents off on one-pound package of Airway coffee."

MR. FAVREAU: Off what?

MR. SHELLEY: Airway coffee, a private brand of coffee -- "This offer good at Safeway stores only on Monday, August 30, 1954."

Now, as you see from this, it is available only to the ones who happen to get that insert when making a purchase. Then, on the reverse side appears something which works a little differently. It says: "Monday, special buy of Safeway, boneless fresh frozen round veal roast, pound, 45 cents." That presumably would be available to any customer visiting that store that day. That coupon, although I have no proof

of it -- I cannot prove it, but I know it -- that is not put out in all stores at the same time. In other words, it is available in one store in the city -- it may be in two stores, I don't know. But it is not general. I will file it with you.

MR. FAVREAU: How do you apply your formula in a case like that?

MR. SHELLEY: In this way, that the retailer would have the right to buy up to \$300 worth of that coffee, less 15 cents.

MR. FAVREAU: Less 5 or 10 per cent?

MR. SHELLEY: Yes, less 5 or 10 per cent. That is exactly the way it would work out.

MR. FAVREAU: Because this will have been the lowest available price?

MR. SHELLEY: Yes, that was available to the consumer -- on a discriminatory basis. It was not available to all consumers. Then, to continue with the brief:

"Another example, and again most likely it only applies at one of the units of this International chain in this city at any one given time. On a given day an attendant is at the door of this or that unit and says to every person who looks like a prospect for a 100 pound bag of sugar -- "Today only, a one dollar discount on a hundred pound bag of sugar."

This again is obvious discrimination against customers who do not happen to shop that day and likewise against customers who happen to shop in another unit of this chain that day. Here, as in the first instance, one of the objects --

and this is very important, Mr. Chairman --

-- is to conceal this loss leading from competitors. And here again our formula would effectively enable efficient independent grocers to compete.

I would like to enlarge on what I mean by "efficient." We have all types of independent grocers some of them pay no attention whatever to what is going on. They would never know anything about this, never notice it. They know that it has an effect upon their business, but they do not know why, because they do not bother finding out what is going on.

But when I refer to an efficient merchant I mean an alert independent whose interest is in keeping in business, and who is a good merchant. As far as that type is concerned, our formula would work in cases like this. It would not work with all because, obviously, one who did not bother about it or did not find out about it -- it would not do anything for him.

Perhaps I could just enlarge a little

more upon that particular point. North Battleford and Saskatoon are only about 100 miles apart. At Saskatoon at the present time the retail price of sugar is \$10.50, and at North Battleford the car-lot cost to the wholesaler is approximately the same. I believe it is just a few cents higher than it is at Saskatoon. The retail price at North Battleford is \$9.60, as the result of a Safeway store very recently having done this very trick. And I will call it a "trick", because that is what it is. And we have had the same thing happen in Saskatoon, but there it has righted itself for the time being. Then, to continue:

"And yet another example of discrimination in some unit or other of this International chain! Now they attach coupons of their own to this item or that item at random in the store. Again most likely only in one of a number of units. Even in the store where it does apply it may be for a matter of minutes or a matter of hours. The coupons may have a value of 25 cents, of 50 cents, or one dollar or any other amount. We are not speaking here of clearing or distress merchandise, although at times it does apply to clearing items. The cashier removes these coupons at the check-out counter.

So there is no evidence of its getting out of the store. The coupon is attached to the item in the store. At the check-out counter the value of the coupon -- perhaps 50 cents -- is stated as a reduction of the price. The coupon is removed by the cashier and undoubtedly serves for the purpose of balancing the cash. I do not know exactly the mechanics, but anyway, so far as the customer is concerned, when the customer leaves the store she does not have the coupon. Then, to continue:

This device keeps competitors, except the real alert ones, in the dark. It again discriminates against many customers of this chain .. against some who shop in that same store that same day, and of course against all who shop in the other units of this chain in this city on that day. Here again our formula would enable efficient independent grocers to remain competitive.

THE CHAIRMAN: I wonder how far your objection to these short-term bargains goes. I am looking now at an advertisement which does not deal with groceries, in which I see various items put up in this sort of fashion, "11 a.m. only"-- and a particular article is named -- "Regular \$58.95, one only, full price \$2.69." And another type of article is mentioned -- "Regular \$295; one only, full price, \$5."

MR. SHELLY: There is a very real distinction between that type of thing and what I am talking about here, because that is available to everybody. Everybody reads it and knows about it.

But here there is discrimination. Not only is there loss leader selling, but there is also discrimination.

THE CHAIRMAN: Well, it is really only available to one person, the one who gets that particular article.

MR. SHELLY: That is true. But you see, I think it is perfectly ethical, because it may be applied to a fur coat, which amounts to quite a little bit of money, and it is probably the end of the season, and they are advertising and they have one only of such and such a size to clear out at a price of so much. Naturally everybody knows there is only one of them.

I am reminded now of this Calgary advertisement. There was nobody knew how many shining quarters were going to be handed out. It is different in that respect.

MR. FAVREAU: This is a publicity stunt which is admittedly designed just to attract people, and it deceives nobody. Let us take, for instance, a meat store that would advertise in exactly the same fashion -- "Tomorrow 11 o'clock, prime roast beef, 15 pounds each at

"1.50 for the whole roast". That would be exactly the same thing.

MR. SHELLY: Yes, that is right.

MR. FAVREAU: Nobody would be deceived.

MR. SHELLY: That is right.

MR. FAVREAU: What would you do with that?

MR. SHELLY: I am not criticising that sort of thing at all. Everybody knows about it.

MR. FAVREAU: How could you except this case from the application of your formula?

MR. SHELLY: There is no difference, so far as the application of the formula is concerned. Actually, you see, it is entirely up to the competing retailers. If they are alert and making it their business to know what is going on, then in these cases which are concealed devices, the alert retailer will still protect his position under our formula. If it is wide open, as you say, in this advertising, well then even the ones who are not alert will know about it. And chances are that if it is advertised for 9 o'clock and at a certain price, it may not necessarily be a loss leader, at all. In fact, I would say generally no.

MR. FAVREAU: But the Chairman has stated a case where it definitely is a loss leader, and on one item, and also is definitely and admittedly a publicity stunt.

MR. SHELLY: Yes -- well, the two go together.

MR. FAVREAU: You say that it is not unethical because there is nothing to deceive anybody, and everybody knows about it, and everybody can try to arrive at the store at the proper time and try to take a chance on getting that particular item.

MR. SHELLY: Yes; but nevertheless it can be a very effective loss leader. I did not catch the significance of it at first; you were mentioning it as a loss leader.

THE CHAIRMAN: I think it is implicit in the variation between the regular price and the price of the article -- the regular price of \$295, and there is one only at 9 a.m. the next day at \$5.

1772

MR. SHELLY: How much?

THE CHAIRMAN: Five dollars -- reduced from \$295 to \$5.

MR. SHELLY: Oh, I did not catch that price before.

THE CHAIRMAN: Well, applying your formula it seems to me it would mean that on the next day every retailer of a similar class of goods could go in that store and ask for \$300 worth of those goods at \$5 each?

MR. SHELLY: No no, because that obviously is a clearing item.

THE CHAIRMAN: Oh, but if you read the full page of ads, I do not think you would agree with that.

MR. SHELLEY: Well, when you get into other classifications of goods there are situations which are peculiar to those classifications, and which would not arise in connection with food.

THE CHAIRMAN: That is, your formula might not apply so readily to other types of merchandise?

MR. SHELLEY: There are peculiarities in other trades which do not arise in connection with foods. Then, to continue with the brief:

"Then this International chain employs yet another device which has all of the attributes of the former examples. Again, it would most likely happen in only one unit of this International chain in this city at any one given time. The store manager verbally announces to customers in the store that during the next 15 minutes the price of their private brand \$1.41 coffee is 99 cents, more than likely with a quantity limit but not necessarily so. Or the time may be 10 minutes or perhaps one hour, depending on the item selected, the number of people in the store etc. Now on page 2941 we find a margin of 6 per cent on private brand coffee of this

company and on page 2946 it is 8-1/2 per cent. But a drop from \$1.41 to 99 cents is a reduction of 32 per cent -- which, nevertheless, is not a loss leader under the definition of this company. If a government questionnaire were completed that day this price cut would not show up since during the major part of the day the regular price prevailed -- so that they could truthfully insert the regular price. Again, discrimination against other customers is very real since people who shopped in this same store an hour earlier paid \$1.41 for this coffee and customers in their other units in this same city throughout the day purchased at \$1.41. Here again our formula would enable efficient independent grocers to compete.

"Yet another example. Come St. Patrick's day this chain promotes a loss leader on "Little Dipper" brand cake flour, which they regularly sell at 28 cents per package -- the going price in cash and carry stores.

That happens to be a very important item. My firm buys it in carload lots all the time.

Now it is priced, in one store at least, at 2 packages for 56 cents, less 17 cents, making it 39 cents. Now this

cake flour has two popular flavours and the carlot cost to the wholesaler is \$2.90 on the one and \$2.75 on the other per case of 12 packages, which brings the average per package cost to 23-1/2 cents. But this retail price of 2/39 is 18-1/2 cents-- a net loss of 4 cents per package quite apart from the cost of performing the whole-sale and retail function. But it is not a loss leader under the definition of this company since they no doubt would explain that this price was not used "with the intent or purpose of injuring or destroying competition or misleading customers". This was not an advertised promotion but it was clearly identified in the store with this 17-cent reduction, along with other items to which a 17-cent reduction likewise applied. Here again, our formula would enable efficient independent grocers to compete.

NOW THE PRODUCT OF THE FARM IS LOSS
LEADERED.

"Now we come to a more significant loss leader promotion than any of the foregoing and this time it concerns products of the farm -- preserving apricots and peaches. Here we really had a demoralized situation, similar to the examples of

prior years which I related in the course of the June 29 hearing at Saskatoon. What we now report happened in Saskatoon last month. Here we speak of identical fruit in all mentioned stores. Throughout the week when this demoralization started there was no local oversupply of this fruit. Nor was there a lower replacement cost in prospect. In all instances the fruit was in first class condition -- not overripe so that it needed clearing. The prevailing retail price in cash and carry stores was \$3.19 for apricots and \$2.99 for peaches, which yielded a normal margin both at the wholesale and retail level. In order to promote volume movement of this farm product the sale of this fruit was keenly promoted through heavy advertising and these mentioned prices were boldly featured by the principal retail advertisers.

And in that city they are Safeway, my company, and Eatons. To continue:

No lower prices were in evidence anywhere and stores generally had bold price cards up alongside their stacks of this fruit at the mentioned prices, as established by competition.

"Monday, August 9 at 5.00 p.m., when in the downtown unit of this International

chain you found these same prices on the price cards but you were told that if you took a case of each the total price was \$5.00 instead of \$6.18. These \$3.19 and \$2.99 prices appeared in their newspaper advertisement that same afternoon.

The paper comes out late in the afternoon and normally applies to the next day's selling. To continue:

"Tuesday morning, August 10, the price cards in this same store remained unchanged at \$3.19 and \$2.99 and sales were made at these prices. However, if you asked if a case of each was available at a total price of \$5.00 like on Monday afternoon, the answer was "yes". If not asked, you simply paid the higher price.

"The same day, in the 33rd street unit, price cards were up at \$3.19 and \$2.99.

So far as pricing is concerned, the prices remained up at \$3.19 and \$2.99. At the time of every sale of a box of fruit the reduced price, one dollar lower, was put on the box. I suppose that was in case of a return of that box by a customer the store would know that the price that had been charged for that box was so much. Then, to continue:

When questioned about the downtown store price of \$2.50 average, the answer was that "The downtown store has flash specials on at times, but rather than allow customers to go downtown," I'll give you a reduction of \$1.00 per case", which then made the total price of a case of each \$4.18. A little later this same day this store sold freely at a reduction of \$1.00 per case, with the explanation that this would NOT continue on Wednesday, the next day. A check on Thursday revealed that throughout the day this unit still was selling freely at \$1.00 per case off, which is well below the carlot cost price to any wholesale buyer.

Carloads of the fruit were coming in freely at the time. It was the season, and there is a very slight variation in the delivered cost. There were slight variations in the market price at the source, very slight -- maybe 10 cents a box or so. And another vary**ing** factor depends upon how hot it is at the time, and how much ice is used in transit in shipping those cars. The cost of icing varies a little bit, too. But these two variables actually made inconsequential differences in the delivered carlot costs at destinations.

Friday generous fresh supplies were received by this unit and by then the price of both apricots and peaches in this one store was \$1.99, making a total of \$3.98 for two cases at .32-1/2.

MR. WHITELEY: Are those the prices posted for that fruit?

MR. SHELLEY: No, at the time of sale it was put down at that price of \$1.99 a box.

"Tuesday forenoon, August 10 --
and we are going back to another unit --

-- a check of the Broadway unit revealed that this fruit was selling at the advertised prices of \$3.19 and \$2.99 and here the staff disclaimed any knowledge of lower prices in other units.

"Tuesday, August 10, a check at the 20th street unit revealed that this fruit was selling at the full advertised price. Incidentally, there is no chain competition near this unit and it often shows up in prices. When told about the lower price in the downtown unit the clerk offered to phone that unit to enquire if any was left at that price and returned with the information that they had six cases left. Upon rushing to the store it was found that they had stacks of this fruit on

the floor and, again, at the price of a case of each for a total of \$5.00.

"Thursday, August 12, when checking at the 27th Street unit, this fruit was selling at the advertised prices of \$3.19 and \$2.99. When questioned about lower prices in their other units the answer was that "This store too had observed the \$1.00 reduction the previous day."

That is how that store had justified its position.

Incidentally, while all this was going on, prices were repeated throughout the week in bold advertisements at \$3.19 and \$2.99.

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I am sure I sent in a page of those advertisements to Mr. Davidson.

Toward the end of the week the whole-sale fruit department of Safeway-MacDonald was short of this very fruit and was attempting to buy from competitive sources.

So that it was not a matter of over-supply, at all. And while I am not casting any reflection upon the Ontario peaches -- as a matter of fact, so far as eating quality is concerned, I prefer them to the western peaches. But I am speaking of the western fruit. It is an entirely

different fruit to what you have in Ontario. I know the Ontario peach. It looks good today, but by tomorrow morning a great deal of the content of a box or a basket may be bad, or going bad. That situation does not apply at all with the western fruit. I say that because you people are perhaps more familiar with the high perishability of the eastern fruit -- which is certainly very fine eating. But when it comes to keeping quality in the store, it is in an entirely different position. Then, to continue:

Following the very careful checking which brought out the foregoing information I personally visited Miss Isabel Atkinson, President of the Canadian Association of Consumers -- Saskatchewan division, and after explaining the situation asked if she might care to come and make the rounds of these stores and see for herself all of this discrimination that was going on. Miss Atkinson is a very busy lady and it did not suit her to make the tour but she asked for a written report on the matter, which later was submitted. This actually was a report to merchants of the territory so that they would understand the background of this situation. A copy was sent to yourself, Mr. Chairman, to

Madam H.E. Vautelet and to Miss Atkinson.
Here again, Mr. Chairman, our formula would have been the answer to this discriminatory situation and would have enabled efficient independent grocers effectively to compete.

I will add a word in regard to why that report was sent out to the merchants throughout the territory. A thing like this, even though it is not advertised, it is amazing, the way it carries through the country. And the merchants around the country have had it put up to them, "Why is it that you charge so much **more**?"-- Perhaps a dollar or \$1.50 more, or whatever it may be. Obviously there are transportation costs to pay from the city to these different country points. So that there would be an addition to the price, normally, over and above the dollar knock-off, and so on. Then, to continue:

As is already clear, there is considerable variety to the dubious practices of this International chain but the end is not yet. Here is another interesting variation. Now we are back to coupons, sometimes mailed out in the form of five coupons to the perforated sheet, each having a specified value toward the purchase of a specified item, and **other times** appearing singly or in multiple in newspaper advertisements. The particular sample I have in my hand contains

five, the first one with a value of \$1.00 when making a general purchase of whatever you like to the value of \$12.00 in any Safeway unit within the designated geographical area. The second one has a value of 30 cents on a pair of nylon hose. The third one has a value of 25 cents on the purchase of a 24-pound bag of flour, or larger. The fourth one entitles the bearer to purchase a turkey at 39 cents per pound -- without the coupon the price ostensibly would be higher. The fifth one has a value of 20 cents on the purchase of a pound of their private brand of tea. And Mr. T.D. MacDonald has many other such coupons on file, released by this same International chain, some of them to the value of \$2.50 when applied on a general purchase of items to the value of \$20.00. Now here again we register the point that if any government agency were to make a price check none of this would be likely to show up on the questionnaire. The prices technically remain undisturbed but nevertheless you could buy any selection of items to the value of \$20.00 and receive a reduction of \$2.50. And I could mention others, such as a 50-cent coupon on a \$3.00 purchase of meat, etc. We might well ask, Mr. Chairman, where do we stand now with that fraction

of a cent profit on that average 30-cent unit value -- which, as stated by Mr. MacAuley, when reduced by one cent would show a virtual loss to the company. Here again, Mr. Chairman, our formula would effectively meet the situation and place the efficient independent retailer in a position to compete.

These are the coupons I have been talking about, that I now hold in my hand. This one is not a very recent one. I think it will interest the Commission to know that since Mr. C.D. MacDonald got busy a year or more ago and since it became known that the Commission would be holding hearings across Canada, we have had less of this sort of thing, which is visible. We have had less of this, which I now show you. However we have had far more of this sort of thing, which is not visible, and which I show you -- which is concealed from competitors and from government people.

I would like to just mention one other thing in passing. I just happened to see this one, which I have in my hand, on a Safeway window the day before I left home. It refers to Kitchen-Kraft flour, which is their private brand of flour. There was a very conspicuous sign in the window to the effect that there was a 15-cent reduction on 10 pounds or 24 pounds bags.

Now, the regular price in Saskatoon on that flour, 10 pounds of Kitchen-Kraft flour, is 67 cents. You take off 15 cents, which makes it 52 cents. That is quite a percentage -- over 20 per cent of a reduction -- maybe 22 per cent. I have not figured it out. On page 2862 of the Safeway brief we find there that flour shows a markup of 6-1/2 per cent. But it would not be a loss leader, because undoubtedly the explanation would be that it was not done for the purpose of injuring competition or for deceiving the customer.

MR. FAVREAU: Could you take an instance of that \$2.50 coupon which would apply to a minimum general sale of \$20 and give us at least one or two practical instances of how you could use the formula in each case?

MR. SHELLEY: Yes, I will do that. That, Mr. Chairman, under our proposed formula would present this situation, that since that is a general offer giving the consumer the right to buy any selection of items, or even one item, if you like -- it could be all sugar, because there was no qualifying condition stipulated.

A customer could have gone into that store -- as a matter of fact that happened to be a general offer in Saskatoon, applying to all units in that particular instance, and it was advertised in the newspapers. But any customer or any consumer was free to go into

any store, and he could buy \$20 worth of sugar or flour or any combination of items he wished to buy. So therefore, by the same token, under our formula the merchant would have been in a position to go in and buy butter and buy sugar or buy any combination of any items he wished. And for every \$20 in value that he bought, he would have that \$2.50 coupon reduction, less 5 per cent in that category of item, less 10 per cent in that category of item -- and that would be that.

MR. FAVREAU: So that you could buy \$300 worth of butter?

MR. SHELLEY: Yes.

MR. FAVREAU: Less as many times \$2.50 as there are times 20 in \$300?

MR. SHELLEY: Yes, five times in every 100 -- that is 15 pounds.

MR. FAVREAU: And in such case you could ask for \$300 worth of any of the merchandise?

MR. SHELLEY: That is right.

MR. FAVREAU: And that would apply on 100 types of merchandise, perhaps?

MR. SHELLEY: That is right. That proves just how effective it would be.

MR. FAVREAU: It might be dangerously effective.

MR. SHELLEY: This is the sort of thing that destroys competition and that is what we are interested in stopping. We are not interested in stopping low prices for consumers.

We are interested in stopping devices which destroy competition, and that is all.

Then, to proceed with the brief:

NOW WE ARE BACK AGAIN TO THE PRODUCT
OF THE FARM.

There is yet another device practiced by this International chain on an intermittent basis for prolonged periods and this one is even more sinister in its effect than all of the others. Now we refer to the undermining of competition in an area for extended periods through across the board predatory depressing of meat prices, and in particular beef.

When I say that I am speaking only of a very recent combination; but I could just as well speak across the board about grocery items, and all produce items, and everything in the store. To continue:

Here, of course, as so ably illustrated by Mr. MacAuley on pages 2877 and 2878, the per pound cost of any given cut is not too readily established -- and the price relationship of the different cuts keeps changing with the season. Consequently proof of loss leader selling is pretty remote. It is most unlikely that anything short of an audit of the operation of

that division could prove the appalling competitive effect of these intermittent campaigns, which in addition produce by-products of which no company could be proud.

I am not going to say anything on that, unless I am questioned; and if I am questioned I am going to say. To continue:

As in the case of the different other devices already mentioned, here again our proposed formula would place the efficient independent in a position to compete.

I would like to digress here for a moment, and go back to where I started out yesterday morning when, first of all, I referred to this advertisement which my company ran in the Saskatoon Star-Phoenix of May 1 which was a message to the consumers. Because, so far as we are concerned, this is a consumer problem, and we want to settle it on that basis. As so I felt that the first step was acquaint the consumers with background information and bring them up to date. I want to read one paragraph toward the end of this editorial. It was a paid editorial. This paragraph is headed Loss Leader Definition and it states.

In its editorial of March 24, 1954 the Star-Phoenix agreed that the Restrictive Trade Practices Commission faces real

difficulties in defining loss leader selling, which distinguishes an unfair method of doing business from accepted and useful practices. Perhaps a good example of this difficulty may be found in the pricing of different cuts of beef.

And this is my own wording here --

The retailer of course buys one or more sides of beef which includes certain proportional patterns of different types of cuts. His cost is applied so much per pound to the total weight. He generally applies a traditional pattern of pricing to the different types of cuts in such a way that the supply of each type of cuts is equal to the consumer demand for that type of cut at that price. This pattern of pricing necessarily varies season by season in conformance with seasonal consumer buying habits.

Since the cost to the retailer is a flat so much per pound for the whole side of beef, and since different types of cuts retail at different prices, it provides wide opportunity for deliberate loss leader selling without too much apparent risk of its becoming exposed as such. Of course those who know the business, such as packing house people or government

statisticians can readily recognise it for what it is. But the public perhaps might only vaguely suspect it. So it is logical to suppose that anyone contemplating loss leader selling in the food field would pick meat, not canned tomatoes or some other such staple item where loss leader selling would be much more apparent and perhaps no more effective in its result.

Now, I want to say -- and I think this will make an impression, Mr. Chairman, -- I want to tell you what happened as a result of that advertisement which was widely read. And I had a lot of comment from consumers about it, who phoned me about it. As I said yesterday, the Canadian Association of Consumers very quickly invited me to come to talk to them on the subject at their annual meeting.

Before I inserted this ad we had had that depressed condition -- severely depressed over-all meat situation in Saskatoon, particularly in beef -- not so much in pork.

At that time the Loblaw price in Toronto was around 75 cents for steaks. In Saskatoon, day in and day out, week in and week out, it was 53 cents. Normally there is a price spread of perhaps two cents a pound, or maybe three cents. But, as I say, it was 53 cents, and all other cuts of beef in proportion. Now, I want to tell

you what happened. After this ad came out, the following week when the Safeway week-end ad came out the price of steak was advertised boldly as being up six cents a pound. That is, it was at a price six cents higher than it had been running before. Now, there had been no significant change. There may have been a trifle one way or the other -- but there was no significant change so far as the market price was concerned. So, up goes the price, six cents a pound.

Then, a week later, up goes the price another six cents a pound. And the third week -- no, just a minute -- 53 plus 6 is 59, and the second 6 cents brings it up to 65, and then the following week it was up another four cents a pound. That was the effect of this ad.

It was coming. We ended up with 69 cents, which was a little more reasonable, and a little more in proportion to the price of 75 cents prevailing in Toronto, which was the normal price.

I overlooked one thing at the time I was talking about apricots and peaches. Oh no, I beg your pardon, I am coming to that now. The brief continues:

COMPANY KNOWN FOR ITS OBSERVED PRACTICES
RATHER THAN ITS DECLARED POLICY.

In reciting these different examples,

Mr. Chairman, we have no hesitation in using the term "Practices". We are not speaking of incidents of human error, such as can and do occur in the best of regulated families. We would add that from our observation such practices are even more pronounced during periods when a superior official of the company more frequently visits an area. Now some of us have co-existed and struggled with this enigma this past 25 years -- many others, despite efficiency and fortitude, have fallen by the way-side. In defence of the people at the store level of this international chain we would say that from our observation such practices often are carried out reluctantly. At times, through the years, they have resulted in resignations. In the light of all these circumstances, Mr. Chairman, you will appreciate that the contents of the "Policy Booklet" referred to in the brief of this international chain are meaningless to consumers and retailers who are affected by these different devices and techniques. How far the Canadian head of this International chain went in the pursuit of his company's aspirations was put on record at the hearing of the "Dominion Trade and Industry Commission" held in Saskatoon on July 31, 1940. After having gobbled up

different Canadian competitive organizations he told the owners of a sizeable Canadian operation which he was attempting to acquire that "He had no hesitation in saying that if they did not sell out, his company would put them out of business because they could not possibly survive the competition of his company". We submit in all seriousness, Mr. Chairman, that this sort of thing has no connection with new innovations or efficiency of operation. This particular local enterprise refused to sell out and I happen to be the co-founder and head of this family business.

ORGANIZED CONFUSION SERVES LONG RANGE
PLAN.

Now despite the fact that the practices referred to seemingly present a muddle of confusion it represents, in our opinion, carefully organized confusion. To a studious observer the pattern is clear. The ever increasing range of sponsored brands of this International chain forms the backbone of the plan. In any trading area where independents allow this chain to undersell popular brand items with corresponding private brand items the competitive situation generally is not as severe as it is where independents match private brand

values with corresponding popular brand values. As a matter of fact, this chain often readily adopts higher prices on popular brand items, provided a price spread is maintained between such item and that of their corresponding sponsored brand. In consequence, the independent sometimes is lulled into a false sense of security -- he feels secure since he knows he is competitive on popular brands -- and he overlooks the fact that this chain is slowly but surely stealing his customers by progressively convincing more and more of them that they get better values when buying its company sponsored brands. Now in northern Saskatchewan, and no doubt elsewhere in greater or lesser degree, this chain has not been permitted to undersell popular brands with company sponsored brands of similar quality. This largely explains why when, a few short years ago, the Provincial Government of Saskatchewan made a survey of retail food prices, it was found that the Saskatoon price level was lower than that of Regina, despite the fact that the landed cost of foods generally is higher in Saskatoon than in Regina. We quote a short editorial from the Saskatoon Star-Phoenix of December 13, 1950.

PRICE COMPARISONS.

"It was agreeable to learn that food prices are generally lower in Saskatoon than in Regina or most other communities in the province. This situation applies even though many commodities are subject to a longer haul and higher freight charges than in the capital city. The difference, we think, is brought about by the active competition in prices resulting from the presence here of two large chain stores. Regina, we understand, does not experience this competition. The chains, we recognize, may menace the existence of the independent merchant and that is regrettable in many ways, for the independent merchant is a source of strength to the community. But the paramount consideration in trade must be the consumer's purse. And we are fortunate as a community if we enjoy competitive conditions which give the buyer a break."

NOT OPPOSED TO MERE BIGNESS.

Lest we be misunderstood, Mr. Chairman, we would hasten to say that we have no objection to mere bigness. We have most friendly relations with many big companies who observe the unwritten law of "live and let live". We are always happy to welcome

new innovations and techniques which make possible ever lower prices to the ultimate consumer. But where bigness is coupled with abuse of power -- where sound economic considerations play no part in the operation of a business, there we have very genuine concern for the future welfare of Canadians, be they grocers or consumers, for ultimately it affects all.

WHY OPPOSED TO MINIMUM MARKUP LAW

It is opportune, Mr. Chairman, to explain at this point why we must express strong opposition to any measure that would impose minimum markups by law. Nothing could more surely play into the hands of operators such as this international chain, whose most important tool is "private brands". (We appreciate, of course, that for reasons that we shall not take the time to develop, no chain is advocating adoption of such a measure.) Smaller operators can not successfully promote private brands and therefore are limited to the carrying of popular brands. Now if a minimum markup law exists it deprives the smaller operator of the opportunity to remain competitive by matching the price of a sponsored brand with his popular brand of a corresponding item. This type of matching the one with

the other at times inadvertently leads to selling at less than cost as we have seen on occasion when a popular brand of tea might sell at 20 cents below cost for months on end. This defensive weapon would become lost to the independent if a minimum markup law were enacted. The International chain, with its own tea and coffee house, of course, could be supplying its retail units on a subsidized basis, so that there would be no apparent violation of any law when selling a sponsored brand at an uneconomic retail price. We use tea merely as an example to illustrate the point.

I wish to file with the Commission at this point a magazine. This magazine is actually a Safeway magazine. It is a very fine publication. It has a lot of advertising in it by national advertisers.

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But to give you a picture of how significant their company-sponsored brands are, I have put a label on the front page here, which gives the page numbers. And you find that in this one magazine, this one issue, are a total of 18 different pages, their sponsored brands appear -- just as beautiful as any nationally advertised products. And, by the way, the same thing applies in the press and over the radio. I think we can call it the very same type, the national type of advertising prepared by

advertising agencies, and beautifully and wonderfully worded, and very convincing, and so on. These sponsored brands are backed by that same type of advertising as are the national brands.

I make that point to make this clear, that when an independent meets with or matches that corresponding item with a popular brand, it is a competitive necessity that he do so. Speaking about foods, we have in the food fields, government regulations which prescribe the standards of quality for the different items. You heard me read out that list of 12 different items -- Taste-Tells corn, and so on. All those are subject to government grade. The consumer knows very well that when she buys cream-style corn, choice quality, she knows what she is getting. It does not matter what the label is; that is a government standard.

So that it is a competitive necessity to be competitive on those items. And, so far as I am concerned, I think to all intents and purposes we can accept it that those sponsored brands are just as good, so far as quality and value are concerned, as the corresponding so-called popular brands. I think that is an important point to keep in mind.

THE CHAIRMAN: Do you wish to file that as an exhibit?

MR. SHELLY: Yes, I will.

THE CHAIRMAN: Then, bring it forward, please. Do you also wish to file these others?

MR. SHELLY: I do not need to, unless you wish to have them.

MR. FAVREAU: You do not want to keep the coupon, do you?

MR. SHELLY: No. I know that as far as that yellow one is concerned, Mr. C.D. MacDonald has plenty of them on file. But I do not think there is any on file of that other one. So it might be a good idea to file them.

THE CHAIRMAN: Very well, they will be filed now.

EXHIBIT NO. OF-16: "Special offer, this coupon worth 15 cents off on a one-pound package of Airway coffee."

EXHIBIT NO. OF-17: Free money-saving coupon, Safeway Super Food Center, Portage Avenue and Birnall Street.

EXHIBIT NO. OF-18: Magazine, "Family Circle."

THE CHAIRMAN: You may continue, Mr. Shelly.

MR. SHELLY: The brief continues:

A TWO-WAY STREET.

On page 2835-2836 Mr. MacAulay is quoted in part as follows: "Because competitors may seek to mislead consumers with loss leaders, the company must prevent such practices from permanently injuring its competitive position and endangering the confidence which its

customers have in its price structure. Therefore, it also is company policy to:

"Meet the lowest price of every competitor, item by item, day by day and town by town etc." And then on page 2839-2840 and I quote - "When the other fellow introduces a low price and we follow him, we usually try -- and we **usually** succeed -- to obtain evidence to indicate that he started the low price. And if it is necessary to take a photograph of his window in which that low price is advertised, or a photograph of the sign which he keeps outside his store, we do so. If he advertises in the newspapers, that is a different story. We just get a copy of the ad. And then we show that he advertises that low price on that day, and that we followed the next day. If he does it by a sign in the window, or a sign on the street, we take a photograph of that and have it available to establish the fact that he started it, and that we followed. And, Mr. MacAulay continues -- if there is below cost selling, and you are going to give some meaning to the word "leader" then I say the fellow who starts it is the fellow who sells a loss leader. But the fellow who follows the price is only trying to protect his competitive position. He has to meet that price in order to protect his competitive

position. Otherwise he would lose all his customers. These, Mr. Chairman, are the words of Mr. MacAulay.

Now, Mr. Chairman, we want to say that we welcome these expressions of Mr. MacAulay. We take it as a compliment to Canadian food retailers generally when Mr. MacAulay indicates that his company usually experiences little difficulty in establishing that this retailer cut that item to such and such a figure. It indicates that Canadian food retailers generally do not attempt to conceal what they are doing. It is an open book for everyone to see and there is no discrimination against different customers of that given store. And that is the way it should be. That is how Canadians like to do business. And they have no objections to someone else meeting their price. We agree too, that the fellow who starts it is the one who originated the loss leader. His competitors, when meeting that price, can not be blamed for its existence. We agree too, that a retailer must meet the price of his competitors, otherwise, as Mr. MacAulay says, he would lose all his competitors. Now this, Mr. Chairman, is a two-way street -- if Canadian retailers do not meet the competition of the International chain then, in time, they would

lose all their customers and be out of business.

A DEMORALIZED MARKET A SAD STORY
FOR THE PRIMARY PRODUCER.

And so, Mr. Chairman, we want to relate to you what happens when this International chain loss leaders preserving apricots and peaches on a concealed basis or when it issues coupons which have a similar loss leader effect. In the case of these apricots and peaches, those of their competitors who make it a point to remain competitive were caught off guard. Their supplies on hand were such as would have been adequate when selling at legitimate prices. But when the price becomes cut by a dollar per case or so, then of course the stores with such cut price get practically all the business and the other retailers get practically none. And while my firm was not the only one to meet this situation I can perhaps give you the picture most clearly if I simply relate how my firm handled it. Here, as always, we were governed by the strict principle that we do nothing that will discriminate against any of our customers on the same market -- I am now speaking of the Saskatoon market which includes nearby Sutherland. Every one

of our customers must at all times find identical prices for any given item in any one of the 11 units we operate here. Well, as I said, we were caught with just a normal supply and therefore could not meet the situation effectively promptly. But we at once set to work and in addition to the normal carload supplies that were in transit and on order we deliberately ordered additional surplus fruit, carload after carload. And so, when these surplus carloads arrived we plugged the stores with fruit and posted cards at the stacks of fruit and in the store windows as per this sample I have in my hand.

"B.C. apricots, while over-supply lasts."

I wish to register the point that we deliberately ordered over-supplies of this fruit. It is the only thing we could do in those circumstances.

MR. FAVREAU: How much did it cost you?

MR. SHELLEY: The average cost, the average car-lot cost, was in the proximity of \$2.20 -- car-lot delivered cost. Then, to continue:

Everyone of our customers had access to this fruit at this price of \$1.99, in place of the proper price of \$3.19 on apricots and \$2.99 on peaches.

We made it \$1.99 on both, because the 33rd Street store made it \$1.99 on both, as I have already indicated. Then, to continue:

Every box that we sold lost us not only our wholesale and retail cost of doing business but a pretty penny besides. But, of course, it was our only way of keeping faith with our customers. Now it is quite possible that this International chain may have photographs to show of cards such as I have here. We are not interested in that. We operate on an honor system and do not bother with photographs. Even if it were our policy to secure photographs of competitor's prices we could not have secured such evidence for reasons already explained. Well, we sold a lot of fruit, and we kept more and more cars coming, and it had a very unfortunate effect upon our fellow retailers who had completely lost interest in selling such fruit since it would only show them a loss. As for the British Columbia grower representative who resides in Saskatoon for purpose of promoting the sale of British Columbia fruit, he is a very unhappy man and had no hesitation in telling us that such a demoralized market does not serve the interests of the primary producer.

I did not go to see him. He came of his own accord and told us that.

Now, had we had a law in effect at this time along the line of our proposed formula this situation would have cleaned itself up in no time at all and efficient independents could have remained competitive.

COUPONS IN ACTION.

Now I should like to relate a somewhat similar story on coupons. This International chain had been playing around with coupons very extensively elsewhere and so we anticipated that soon that campaign would reach Saskatoon. We often can tell by watching Vancouver papers what new device or technique will hit us next. So we took a defensive step in advance. We informed our customers through the medium of our newspaper ads that any coupons promoted by any food chain would be accepted in our stores at double their face value.

I should say at this point that our policy is that if a price becomes cut we do not cut that price; we meet that price, no matter what it is. But, with coupons, it is a different story. These coupons had the name of that competitor on them, and if we merely met the value of that coupon it would not come to our store.

It would go to the other stores. That is why we doubled it. To continue:

We thought that this perhaps might discourage this chain from bringing that campaign to Saskatoon but it didn't. Soon a coupon appeared as part of a newspaper ad of this International chain and this coupon had a value of \$2.50 on a \$20.00 general purchase.

I might say that coupon is on file with Mr. MacDonald.

THE CHAIRMAN: What period of time was that?

MR. SHELLEY: I think it is about a year ago. I am just speaking from memory now. I think it is a little more than a year ago, as a matter of fact. To continue:

Therefore our customers knew that if they would take this coupon to our stores it would have a value of \$5.00 on a \$20.00 purchase. As soon as this ad appeared we posted signs in our store windows to the effect that these \$2.50 coupons had a \$5.00 value in our stores. In two days this cost my firm \$3,225.00, but here again we kept faith with our customers. Obviously, this type of competition was terribly upsetting to our fellow retailers, but we

were not criticized. They know that we are fighting their battle as well as our own. You can see, Mr. Chairman, that the so-called average independent has no way of effectively meeting this coupon device. But here again, our proposed formula would effectively meet the situation and enable the efficient independent to remain competitive. These are just a few examples of the present plight of the efficient independent when his giant competitor employs an endless procession of devices and techniques to undermine his position.

MR. WHITELEY: What would be the position if the coupon represented a premium value?

MR. SHELLY: Under our formula?

MR. WHITELEY: Yes.

MR. SHELLY: It would be the same thing. The formula would apply in the same way.

MR. WHITELEY: How would you fix the value of the premium?

MR. SHELLY: We would not have to fix the value of the premium because we simply say that such and such a premium is available with every purchase of \$20.00.

MR. WHITELEY: Such as a tea kettle?

MR. SHELLY: Yes; so that we are not interested in the dollar value of the tea kettle.

THE CHAIRMAN: So you say, then, if any premium at all, whatever its value, were offered --

MR. SHELLY: Yes, that is right. And I am glad you mentioned this, because we have to differentiate between premiums -- which are very common, quite common I believe with manufacturers, you see. Manufacturers put out premiums, but those are available to every retail outlet.

MR. WHITELEY: But I am referring to the premium offered by the retailer.

MR. SHELLY: Yes, that is right. But so far as premiums are concerned, offered by retailers, this same thing would apply.

MR. WHITELEY: In other words, if a retailer wanted to build up his trade in a slack period of the week --

MR. SHELLY: Yes.

MR. WHITELEY: And if he endeavoured to do that by giving a premium, your formula would prevent him from doing that?

MR. SHELLY: That is right. If the retailer would go at the specified period of the day, he would be in the same position as the consumer buying at that time. It applies, of course, the next day.

MR. WHITELEY: That is, under your formula you are attempting to prevent any form of customer inducement.

MR. SHELLY: We attempt to discourage that type of practice, which destroys competition.

You see, that premium alone would not -- well, it depends on the value of the premium. But the premium alone would not necessarily be an inducement for a retailer to go and buy.

178 I will give an example. Very recently Safeway was sponsoring its private brand of bread, and they offered as a premium in the province of Saskatchewan a Buick motor car. I am sure they did the same thing in other provinces. Now, what would be the position of a competing retailer in regard to that bread? I would say that under our formula he could go to Safeway as often as he liked, and while that offer was in effect he could buy bread, and he would receive the same number of chances on that, on the winning of that car, as any consumer would, who during that time purchased the same number of loaves of bread.

MR. WHITELEY: Well, let us come back to my premium.

MR. SHELLY: That is a premium.

MR. WHITELEY: But this is a different type, though. In one case you say if the premium is \$2.50 cash --

MR. SHELLY: Yes, it is a coupon.

MR. WHITELEY: A coupon for \$2.50.

MR. SHELLY: Yes.

MR. WHITELEY: Then your competing retailer can go in and take any goods to the same value and reduce them by the coupon value,

less the applicable discount?

MR. SHELLY: That is right.

MR. WHITELEY: And get the goods.

MR. SHELLY: That is right.

MR. WHITELEY: Now, let us say the initiating retailer offers a tea kettle.

MR. SHELLY: Yes, with a purchase of \$20.

MR. WHITELEY: Yes.

MR. SHELLY: And the retailer goes in and, let us say, he buys \$100 worth of the merchandise. It just depends on what the sponsoring retailer does, as to whether he stipulates the conditions that it applies to a wide range of items, or any item.

MR. WHITELEY: But let us say it is on the whole range.

MR. SHELLY: Then, assuming that he does that, he makes it available on items of your own selection -- let us say the retailer walks in and he could buy up to \$300 worth of any item, if there is no condition imposed -- of any item.

MR. WHITELEY: That is, at the shelf price.

MR. SHELLY: Yes, at the shelf price.

MR. WHITELEY: Yes, but in the first case he gets \$2.50 off every order of \$20.

MR. SHELLY: And in this case he would get the tea kettle on every order of \$20. And he still gets the 5 per cent or the 10 per cent,

depending on the category of the item, because, under our formula, he would still get the 5 or 10 per cent, depending on the item that he purchases.

MR. WHITELEY: I was wondering whether your formula actually read so as to embrace the taking of the tea kettle as well.

MR. SHELLY: Oh yes, it does.

MR. FAVREAU: You might become overstocked with tea kettles.

THE CHAIRMAN: If he bought \$300 worth of 2,900 articles, he would get a lot of tea kettles.

MR. SHELLY: Shall I proceed with the brief?

THE CHAIRMAN: Yes, proceed.

MR. SHELLY: It goes on:

SHOULD PRESERVE CANADIAN DIGNITY
AND RESPECT.

On page 2979 of the brief Mr. MacAulay confirms that in California it is an almost day by day occurrence for a retailer to advertise to the effect that consumers should buy certain loss leader items at specified stores, bring them to him and he will pay them a profit. That, according to Mr. MacAulay, is their effective way of killing loss leader selling. We respectfully suggest, Mr. Chairman, that if this

were an effective way of killing them they would not continue to re-appear almost day by day as reported by Mr. MacAulay. We register the conviction in the strongest possible terms that such procedure certainly is not the answer to the problem in Canada. We have in this country still a certain measure of dignity and respect and we believe that Canadians generally agree with us when we say that this is worth preserving. What fools retailers in California must be in the eyes of their customers when they lower themselves to such proceedings. If that were the way to do things I'm afraid that there would be a lot of crippled housewives in Saskatoon right now as a result of the carloads upon carloads of boxes of fruit that they would have had to lug across the street from one store to another this past few weeks. We admit that, in a sense, our mentioned coupon incident was somewhat similar in principle. And I say that we were most reluctant to use the defensive measure that we employed, but if anyone can tell me how else we could have kept faith with our customers I'd like to know. At any rate, its a very different matter carrying a coupon to a store to what it is to lug cases of fruit, and what have you. That California technique in any event could not be really effective since

loss leadering retailers almost invariably employ a quantity limit to any sale of a loss leader item. Certainly that is our experience. It is precisely the fact that dubious techniques and practices as herein outlined generally carry with them a quantity limitation which today prevents a retailer from buying from another retailer who engages in uneconomic practices.

I would like to speak about something else for a moment, which comes to my mind -- the question that Commissioner Whiteley raised yesterday in regard to the hardships that might be imposed upon the retailer as a result of his having to supply other retailers.

I would like just to make a comparison of the ease of handling under our proposed method as compared with this method which is concurred in by Mr. MacAulay as being the practical way.

174 Think of the disorganizing effect in a retail store of hundreds or perhaps thousands of consumers running to a certain retailer to purchase that loss leader item, and take it across the street to the other retailer -- a unit at a time, because that is likely what it would be. There is a quantity limit, almost invariably.

Think of the disorganization in that store, compared with our method of handling it.

In our case it is a matter of dealing in large quantities. It is in a back warehouse, and it is not cluttering up the front of the store. There is no comparison from the standpoint of the disorganization it would cause.

MR. WHITELEY: Except as to the range of items on which your formula would apply as against the other.

MR. SHELLEY: But these things that happen in California will apply to the same range of items as it is likely to apply to in Canada.

MR. WHITELEY: But the point I make is that under your formula any retailer who wanted to get goods from any other retailer at the stated discount would be free to go ahead at any time --

MR. SHELLEY: Yes, and that limits it to a few people, relatively, whereas in the other way --

MR. WHITELEY: A few people, yes, but on a great many items.

MR. SHELLEY: In practice there are not a great many items, because it is confined-- you do not find this condition existing at one and the same time on a great many items.

MR. WHITELEY: No, that is exactly the point I make. Take the small dealer who, rather than go down to the sholesale or place an order in the wholesale for goods, sees that he can go

down to some neighbouring retailer who happens to be selling the same product that he wants to handle. And he comes in and he takes whatever he needs for the moment at the --

MR. SHELLY: Oh no, he does not do that, Mr. Commissioner.

MR. WHITELEY: What is there to prevent him?

MR. SHELLY: He has to wait until the next day. You see, there is a time lag. That thing is not governed by his need for that merchandise, because he does not know what his competitor is going to put on today. But if that competitor does put on this item at a cut price --

MR. WHITELEY: Well, then, your formula does not need to be a cut price?

MR. SHELLY: No; and if it is not a cut price you may rest assured that there is not going to be any buying under this formula, in practice.

MR. WHITELEY: Well, I can see quite often -- in fact I have heard of cases where a small merchant on the corner, rather than deal with the wholesaler, finds that he could go to a chain store and get his supplies on a basis which enables him to carry on his business. If he can go to a chain store and get another 10 per cent, why would he not do it?

MR. SHELLY: Well he imposes a financial penalty upon himself.

MR. WHITELEY: Well, he may be conducting a business in which he does not need to be absolutely competitive with his larger competitors.

MR. SHELLY: In that case he would merely come and buy from the shelf, likely.

MR. WHITELEY: Yes, and he would get his discount.

MR. SHELLY: No.

MR. WHITELEY: Why not?

MR. SHELLY: No -- no, no. He would not, at all. I am glad you raised that point because it is very important.

MR. WHITELEY: I am trying to raise all the points.

MR. SHELLY: And I am so glad that you did, because I was not getting your point until just now. But that selling retailer has the right to say to that man, "You wait; you just wait until I get that extra merchandise in." It may take a week before he has it in. He can discourage that practice. He has control of it.

MR. WHITELEY: But the other man might put a standing order with him.

MR. SHELLY: It just would not happen, in practice. Because then he does not have the benefit that might come as a result of the time factor, and having the item available to him immediately instead of having to wait, in the normal course of business, and ordering it himself. So he has not got that time factor benefit,

and consequently he has no benefit at all -- unless it is a deep-cut price, the kind of thing that our formula exists for.

MR. WHITELEY: No, but the situation I have in mind is the little fellow who does not want to handle things in case lots. He runs a little neighbourhood, after-hours business, and he is quite happy to get things in half-dozen lots, or perhaps only three or four at a time.

MR. SHELLY: I would like to say this, on that point, that there is a certain amount of that going on all the time, and I think there always will be.

MR. WHITELEY: Except, if you give them an additional discount, it will encourage them to engage in that practice.

MR. SHELLY: No, I do not think so, because the time factor comes into play, and the selling retailer has the opportunity of saying, "You come back a week from now and I will likely have it in by then."

MR. WHITELEY: But the merchants I have in mind -- time is not of too great significance to him.

MR. SHELLY: I beg your pardon?

MR. WHITELEY: The merchant I have in mind, who would do this type of shelf buying, -- time is not of too great significance to him.

MR. SHELLY: No, -- and if he is so small it would not be of any particular

significance to the selling retailer, either, so far as that is concerned. Because that sort of thing is very, very minor in relation to the whole operation -- very minor.

MR. FAVREAU: But he could be carrying that on for a period of years.

MR. SHELLY: Oh yes, but the effect of it on any one retailer at any one time is a very minor thing.

MR. FAVREAU: It might drive him crazy, anyway -- seeing the same person coming back day after day to stock himself out of your stock. Well, I am just wondering -- if it lasted for any length of time --

MR. SHELLY: Well, I can say in all sincerity it is largely a theoretical problem.

MR. WHITELEY: But you said yourself that some small retailers do stock themselves in that way.

MR. SHELLY: Yes, that is right. Shall I proceed?

THE CHAIRMAN: I think perhaps we had better adjourn for lunch pretty soon. I had hoped that we would have completed this brief, but there are still three or four pages to go through. Perhaps we had better adjourn now and return at 2.20, if that is satisfactory.

MR. SHELLY: That is fine. Would you prefer to put someone else in next. If I am interfering with somebody else's time,

I will be glad to wait over.

THE CHAIRMAN: No, I think there is no one else to be inserted at this stage.

--- Luncheon adjournment.

--- Upon resuming at 2:20 p.m.

THE CHAIRMAN: You may proceed with your brief, Mr. Shelly.

MR. SHELLEY: Mr. Chairman, I missed one little point that I had intended mentioning at the time that I presented that coupon with the 15 cents on the coffee, which was in the nature of what I would call an insert, which the customer finds in his purchase, when he reaches home after having made a purchase.

I wanted to indicate this, that although that coupon was only 15 cents on an item the price of which is something in excess of a dollar, that pound of coffee, sometimes that cut amounts to a great deal more than that. And I want to

put on record a very recent one which applied in one store, to our knowledge. It may have applied in two or maybe more, I don't know. I am referring to a 20-ounce loaf of bread, at 10 cents a loaf, which regularly sells in their stores -- I am speaking of the same company -- regularly sells at 15 cents.

MR. WHITELEY: Do you mean there was a five-cent coupon?

MR. SHELLY: So far as I know there was no coupon in this case.

MR. WHITELEY: It was a straight price reduction?

MR. SHELLY: Yes. But certainly the people in that neighbourhood, where that store is situated, knew about it, because our unit, which is a few blocks away, sold practically no bread. And we started checking. There had been no advertising -- at least not in the papers. And then we found out that the bread was selling for 10 cents. That particular coupon which I filed with you was handed to a customer who went into that store to buy a loaf of bread at 10 cents. When he made that purchase he was handed that coupon which was good for 15 cents on a pound of coffee on a specified day.

I am just showing you how it works, and how drastically -- because that is a cut of $33\frac{1}{3}$ per cent on bread.

And, along the same lines, -- and

this will just take a moment, and it dates back to the particular occasion concerning which I mentioned the Little Dipper cake flour. That cake flour did not appear in this ad. But here at the bottom you see this, "Be sure to visit the Second Avenue Safeway store and stock up on the numerous not advertised specials." I give you that to indicate, as it does, that the values are not the same in all units of that chain in that city.

MR. WHITELEY: Is the Second Avenue store a new unit?

MR. SHELLY: Relatively new, in operation perhaps two years or so. They call it their new store. It is fairly new. So I will lodge this with you.

THE CHAIRMAN: Do you wish to file that?

MR. SHELLY: Yes.

THE CHAIRMAN: Then, it will be the next exhibit.

EXHIBIT NO. OF-19: Newspaper advertisement, Safeway stores.

MR. SHELLY: Then, I will proceed at page 35, as follows:

PLEASE - NO SIDE-TRACKING.

As admitted on page 3009 of the mentioned brief, existing loss leader laws in Canada

have no teeth in them. Then on page 2930 Mr. MacAulay suggests that perhaps the remedy is to be found in attacking the problem of deceptive advertising either by enforcement of existing legislation, or if inadequate at present, then by enacting legislation which will effectively curb such deceptive advertising. Knowing the ramifications of our problem as we do we want to emphasize very strongly, Mr. Chairman, that tinkering with legislation to control advertising would have little if any value for us. Certainly, we are all for doing what can be done along that line too, but that would in no way serve as a substitute for the effective results that are obtainable only through enactment of our proposed formula.

I would like here just to refer to the July 1954 issue, page 24 of the Winnipeg and Western Grocer. The whole page deals with grocers. Then, it continues on another page -- and I shall refer to only a short portion of the paragraph where it says:

"It is hinted backstage here that this will not be easy --"

Perhaps I should read from the beginning of that paragraph. It says:

It is the same old story repeated again and again about the harmful effect of these unfair trade practices; but what is causing deep concern in officialdom here is how to correct such practices. It is hinted backstage here that this will not be easy, due to the complexity of loss leader problems, especially when it is recalled the experience of another similar specific federal enactment, Section 498(C) of the Criminal Code.

Prosecutions under this enactment for selling goods at prices unreasonably low having or designed to have the effect of substantially lessening competition or eliminating competitors have been found to be difficult to prove and more in the nature of inquests rather than a cure, as one food group termed them.

That is the point I wished to stress. I think the examples I have given here indicate quite clearly that, in the main, it is not a matter of advertising. It is not an advertising problem, in the main.

A LIFE-LINE PLEASE - FOR THE EFFICIENT OPERATOR.

Now perhaps, Mr. Chairman, some trade bodies are inclined to be visionary and

and expect the Government to provide a Utopia for them. We have no illusions about the fact that our proposal offers nothing more than a life-line to the efficient operator. It is a good thing for all -- for the consumer and for the efficient retailer too -- that competition should remain keen. It will remain keen under our formula. Our proposal is based on realism plus thorough experience with all of the ramifications that enter into the picture. We therefore make no apologies, Mr. Chairman, when we urge the Commission to recommend to the Government the enactment of our proposed formula. By way of clarification we would add here that it naturally was not our intention that our formula, as expressed in the June 29 brief, should be the last word in every detail. We were expressing principles, quite realizing that in the matter of detail, when it comes down to the drafting of the enactment, there would have to be appropriate modification here and there. For example, in the matter of meat, while it is perfectly practical for a selling retailer to direct the buying retailer to pick up the purchase of hams and other such cured meats directly from the wholesale supply source, the procedure has to be different where we are concerned

with cuts of fresh meats. But there are no real difficulties in connection with any such obvious adjustments and modifications within the mechanics of the plan.

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MR. FAVREAU: In the matter of meat, under your formula could a competing retailer who would want to have only one given cut of steak be able to buy \$300 worth of that cut from his competitor or should he be forced to take the whole carcass of meat?

MR. SHELLEY: The way the formula reads as contained in the brief of June 29, while we did not go into the details in elaborating on these variations which have to be made, the way it reads there it would apply just as you have said, that he could go and pay for \$300 worth of round steak, and he would have the right to come and get it whenever the selling retailer advised him that it was available.

In practice, Mr. Commissioner, we know that there would have to be some modification there. And as a matter of fact that modification is just as necessary, I would say, for the sake of the buying retailer as it is for the sake of the selling retailer -- at least if we think in terms of the small retailer for whom that \$300 worth of that steak normally would be too large an amount.

Of course there is nothing about it to force him to buy \$300 worth.

THE CHAIRMAN: He could buy \$5 worth.

MR. SHELLEY: Yes, that is right.

But in practice I would say that there would have to be a provision made. When you think of cuts of fresh meat, that could be spread over a number of days, instead of treating it as one purchase. And that of course would take care of different problems which, on the surface, are quite apparent.

MR. FAVREAU: In other words, you could use that device totally to deprive a given competitor of all his stock?

MR. SHELLEY: Yes.

MR. FAVREAU: Of the choice pieces.

MR. SHELLEY: Yes. And there is also the question of the value. There is a certain processing operation in it, the cutting of the meat, and wrapping it and so on. Shall I proceed?

MR. FAVREAU: Yes.

MR. SHELLEY: The brief continues:

NO DISCRIMINATION, PLEASE.

Perhaps the question might arise as to whether it might be the part of wisdom to limit the "obligation to sell to another retailer" to that retailer who was first to cut that price, instead of having the wide open provision that any food retailer has the right to buy from

from any and every other retailer whether or not the price was cut.

I have not heard anyone raise that question, but I am raising it here because, conceivably, someone could come up with that suggestion, which, on the surface, looks logical. I continue:

We would strongly recommend against this discrimination as it would lead to no end of argument concerning who had been first to cut the price. In practice, of course, retailers will be inclined to purchase from that retailer who, in their opinion, had been first to establish that cut price.

CONSUMER POSITION ALWAYS PROTECTED.

We can not anticipate any reason, Mr. Chairman, why our proposed law would need to be amended in any way within the foreseeable future. But we want to say this -- if and when there is any occasion to ask for any amendment, we will want any such recommendation submitted to the appropriate authorities by a joint consumer-retailer committee, to the end that the interests of the consumer shall always remain adequately safeguarded.

SELF-POLICING - FRIEND OF THE TAX PAYER.

We hope, Mr. Chairman, that our submission may prove of some help to the Commission in reaching its conclusions concerning what recommendations should be made to the Government. We have merely asked for a life-line, but even a life-line spells the difference between extinction and survival for many Canadians who are known for their efficiency and integrity. Our problem is in the category of a very real social injustice. We feel confident that the Commission will recommend to the Government that form of action which in its opinion holds out the best hope for alleviating this injustice. Aside from everything else, the taxpayer's money should not be spent indiscreetly. In that respect, we feel that the Commission will appreciate the self-policing nature of our proposal -- a formula which calls for a very minimum of expense so far as the Government is concerned.

MUST STAND ON ITS MERITS.

As you will appreciate from the convictions that have been expressed in this submission, we have no doubts about how this plan would work out from the point

of view of the Government, of the consumer body and finally of the retailer. Even so, we have no objection whatsoever to the Commission or the Government looking upon it perhaps as a worthy experiment. So far as we are concerned, it must stand on its merits. And so, even if our plan were to be regarded as an experiment, there is no telling but what its application to the so-called food field in the first instance, might quickly pave the way for a similar happy solution in other fields where this problem likewise is very real. In stating our case we have attempted sincerely and conscientiously to acquaint the Commission with the ramifications of our problem. We want the best solution that anyone has to offer -- if by any chance the Commission has some other effective approach, which may have completely escaped us, we would be very happy to study it with an open mind. One last comment -- today, in considerable degree, loss leadership is practiced much less conspicuously than it once was, but whether it operates openly or on a concealed underground basis, it nevertheless is very real and damaging. By the very nature of present economic trends, the problem is much more likely to worsen than to improve of its own accord and this too, we feel sure, the Commission

will consider, along with everything else.

In thanking you for the cordial hearing accorded me, Mr. Chairman, may I conclude by quoting the conclusions reached -- without any opposing vote -- when the WORLD COUNCIL OF CHURCHES met at Evanston, Illinois, last month.

"The World Council of Churches Friday backed private enterprise as a boon to "economic progress", but said the state must stand ready to counter depression or injustice.

"In a major pronouncement on a "responsible society," Christian representatives from 48 countries declared there has been a "fresh recognition" of the value of "relative freedom in enterprise".

"At its best, the business system has provided incentives for the responsible initiative and hard work which produced economic progress," the council said.

But it added, the state "in the public interest" must intervene to curb excessive "economic or social power" and act "if necessary," to counteract depression or individual crisis.

And this is respectfully submitted, Mr. Chairman and gentlemen by myself on behalf of the Retail Merchants Association of Canada Saskatchewan Incorporated and the National

Foods Division of the Retail Merchants Association of Canada Incorporated. I thank you.

THE CHAIRMAN: Mr. Gerin-Lajoie, I believe you have some questions?

MR. GERIN-LAJOIE: Yes, I have one or two questions. First of all, I would like Mr. Shelly to give us a preliminary clarification, if possible. Mr. Shelly, having in mind what Mr. Brault explained to the Commission this morning, I wonder if it is quite right to say-- and I would like you to explain this -- to say that this brief is submitted, first, on behalf of the Retail Merchants Association -- that is, having in mind Mr. Brault's statement -- on behalf of the National Foods Division of the Retail Merchants Association of Canada Incorporated. I understood Mr. Brault to explain that your first brief had been approved by the Foods Division. I wonder about this particular brief. Would you explain in greater detail.

MR. SHELLEY: Yes. This second brief has not anything new in it in principle, and it merely supports the first brief. But five signed copies have been submitted to the Commission here, signed by the secretary of the Saskatchewan association and by the president of the National Foods Division of the Retail Merchants Association of Canada -- signed by him in that official capacity. Does that answer your question?

83 MR. GERIN-LAJOIE: Yes. But I just wondered if that was in contradiction of the explanation given by Mr. Brault -- that this brief had not been submitted. I have particularly in mind that possibly the greatest part of the brief dealt with what appeared to me as a particular situation in a certain region of the country. So I wondered if in these circumstances, and having in mind what Mr. Brault has said, this was really, as a whole, submitted on behalf, first, of the National Foods Division of the association, or if you would bring in the point that only the substance of your formula was approved, and that the rest of it is submitted on your own behalf.

MR. SHELLEY: No.

MR. GERIN-LAJOIE: I believe the Commission would like to have that answered as clearly as possible.

MR. SHELLEY: The position is that it is the official submission on behalf of the Retail Merchants Association of Canada (Saskatchewan) Incorporated, and the National Foods Division of the Retail Merchants Association of Canada, Incorporated. And if I am incorrect in that I would like Mr. Brault and the national secretary, here, to correct me.

MR. RANDS: That is right.

MR. GERIN-LAJOIE: And I would like to hear from you whether the brief has been approved by the Retail Merchants Association of Canada

(Saskatchewan), which is not represented at this session, is that right?

MR. SHELLEY: I am their official representative here. I am glad you mentioned that. Mr. R.E. Walker, the secretary, was unable to come down. As you know, it is a long trip, and so, I am the sole representative here for Saskatchewan. But the signed copies on file with the Commission, of course, have the official signatures for Saskatchewan.

MR. GERIN-LAJOLLE: I thank you for these explanations. Now, I have only a question or two to ask you. I take it, as an instance regarding a situation which you seem to disfavour. I am referring to page 14 of your brief, where you say:

-- whereas the Safeway units are supplied on an extremely low markup basis an entirely different higher price structure governs sales to independent grocers.

Now, I would like to hear from you whether this is an usual situation, let us say, for a wholesaler who performs also the functions of a retailer -- as in the case of Safeway, in this particular instance -- is it unusual to supply independent grocers at a different price from its own outlets -- a price different from its own outlets?

MR. SHELLY: I would say, sir, that from my knowledge of the business it is an unusual situation. We can take, for example, Western Grocers, who are very large operators in western Canada. They happen to have a substantial chain of their own in Winnipeg and elsewhere, but mainly in Winnipeg -- Shop-Easy stores. My understanding is that they have a price structure which is based upon the volume of purchases of the store concerned, and that it does not matter whether it is a company-owned store -- or maybe a unit of a subsidiary -- I am not sure which -- it may be just a subsidiary company -- but to all intents and purposes it is owned by the same interests. But, so far as my information is concerned, the price level that applies to any given store is the same, whether it is Shop-Easy or an independent store in that volume category, operating as a member of a so-called voluntary chain.

Perhaps I should amplify that a little bit in this way, that Western Grocers have more than one voluntary chain of independent stores. They have the Red and White and they have, more recently, started in there under the name of Tom-Boy stores.

THE CHAIRMAN: Western Grocers does not own those stores, does it?

MR. SHELLY: No, they are in the Shop-Easy, either directly or through a

184 subsidiary, I am not sure which. But they do not own units of Red and White chain, or units of the Tom-Boy stores.

MR. GERIN-LAJOIE: Are those affiliated with Western Grocers?

MR. SHELLEY: Yes.

MR. GERIN-LAJOIE: I understand that Western also supplies fully independent retailers, is that correct?

MR. SHELLEY: Yes.

MR. GERIN-LAJOIE: And do Western supply those entirely independent retail stores on exactly the same basis with the same price conditions as the affiliated, or their own retail outlets?

MR. SHELLEY: I cannot say that; I do not know.

MR. GERIN-LAJOIE: Let us take an example about which you must know. I understand that you, personally, are an executive officer of a wholesale firm.

MR. SHELLEY: Yes.

MR. GERIN-LAJOIE: And am I right in understanding that you are also connected with a firm operating as retail outlets?

MR. SHELLEY: That is right.

MR. GERIN-LAJOIE: Would you care to explain to the Commission on what conditions your wholesale firm supplies (1) your affiliated retail outlets and (2) the entirely independent retailers.

MR. SHELLY: Yes. I would not have brought up this point on my own, because I would not want anyone to feel that I am in way making use of my position here, as spokesman for the Retail Merchants Association, to advertise my company. But I am glad to provide the information.

We originally started out -- and I am speaking of my family now -- started out as retailers, and by 1928 we had built up 36 units. Today it is 37 -- we have one more now than we had in 1928. But we started wholesaling in 1933, at which time a group of some 50 independent stores came to us. We did not go to them. They came to us. They knew we had an economical warehousing setup for servicing our own units, and they said to us that they would like to be served on an economical basis, like we were serving our own stores, and asked us if we would look after them on the same basis upon which we supplied our own stores, provided of course that they would subject themselves to the same procedures, to the same economy procedures, that applied in serving our own stores.

There was no selling cost involved, no credit loss. It was cash business.

So we came to an arrangement with that group. And ever since that day, in 1933, we have been serving our own group of stores, and also this other group of stores, and also this other group of stores at one and the same price

structure, which is not based on volume at all. It does not matter whether it is a store that buys half a million dollars worth of goods from our warehouse, or buys \$25,000 worth of goods -- they enjoy exactly the same price structure.

There is one little variable that I wish to introduce -- and there is no discrimination there. But obviously a retail unit with a large volume has very little occasion to buy items in less than case-lot quantities. It will buy some items on that basis, but mostly it is in case-lots. Obviously, stores with small volume will buy a larger number of items in what we call broken cases, or less than case lots. And we do have a slight price differential as between case-lot prices, and broken case prices, to take care of the extra cost involved in handling the smaller quantities. But that applies to all units.

Your answer is that it is one structure. And, by the way, today we serve, as sole supply base for over 100 independent retail stores, on this basis. And it is a 100 per cent set-up.

MR. GERIN-LAJOLE: Do you also supply other retailers on a different basis?

MR. SHELLEY: No.

MR. GERIN-LAJOLE: Is it possible that wholesalers supply independent grocers on different bases, according to circumstances, giving credit or different quantity conditions, and so on, which might explain, in some instances,

differences in price?

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MR. SHELLY: That is true. I will show this as a typical way of MacDonald's Consolidated soliciting business from the independent merchant. You might call it specials, and these sheets are sent out weekly with the object, of course, that these items will start an order, and that other items, on which the merchant does not know the price, will be added to that same order. And that is the way these things usually work.

The customary thing is that a retail grocer buys, as a rule, once a week. So these specials start the order going, and the order comes their way.

MR. GERIN-LAJOIE: Now, regarding your formula, quite clearly its general purpose is to discourage the retailer from cutting or, as I suppose you would say, unduly cutting his prices. I wonder if you would also frown upon economic practices at the retail level under which a retailer goes to some greater extent in the form of advertising -- let us say a nursery for children, and so on. My question is this: I wonder if your general idea is to discourage or to look with disfavour upon practices which lower the prices to the consumer, and do not look with disfavour in the same way upon expenses which do not bring lower prices to the consumer, but which mean some loss, if I may say so, to the retailer.

MR. SHELLEY: I would like to answer that simply, if I can, and I think perhaps the simplest answer is to say that we are in favour of anything that will result in lower prices to the consumer -- that is, with methods which make possible lower prices to the consumer, on an ethical basis. And perhaps, when I use that word, I should say that the opposite to that, to me, are methods and devices which, in effect, destroy competition.

For we are in favour of anything and everything that is ethical and conducive to the lowering of prices. I think what you are leading up to is that there are different things which, while they have nothing directly to do with the price of an item, they attract more customers into a store. It may be an amusement item for children, and it attracts more people to that store. And, as the result of extra volume, it makes possible a lowering of prices. Well, we certainly have no objection to that, at all.

MR. GERIN-LAJOIE: I will give you an example --

MR. FAVREAU: I think you are referring to those which are the exact equivalent, in dollars and cents, to a premium.

MR. GERIN-LAJOIE: Yes, I had that in mind. I was going to give an example. Let us say that a retailer has in his budget \$5,000 in a year to spend to bring customers to his store. He may

spend it in advertising in the newspapers; he may spend it by having a nursery for children, or he may spend it entirely on premiums -- having just a sign in his window, which does not cost anything. Do you have any objection to that latter practice of giving premiums, while you would not have any objection to spending the same amount of money in some other fashion?

MR. SHELLEY: The question of premiums, I think is a debatable one. But in principle I would say there is nothing deceptive about premiums. It is open to anybody and everybody, in practice. And so therefore, in principle, we have no objection to them. They can, of course, become a great nuisance to the consumers. I know Mr. Rands and I had lunch yesterday with Madame Vaudelet, and we got talking about that sort of thing.

The consumer -- that is, the thinking consumer -- actually does not welcome that sort of thing, because he has the feeling that these premiums have to be paid for some time or some how. I would not say that is necessarily so, because if they have the effect of producing extra volume and thereby reducing the cost of doing business, they need not necessarily have any effect upon the price.

MR. GERIN-LAJOLIE: Comparatively, with other retailers' prices.

MR. SHELLEY: Yes. So our purpose in

appearing here is not at all to find fault with that sort of thing.

MR. GERIN-LAJOIE: That is all I wish to ask, Mr. Chairman.

MR. FAVREAU: Just carrying on from Mr. Gerin-Lajoie's last question; you told us this morning that in certain grocery stores, wherever an item was not publicly advertised in newspapers, but happened to be available there in the store at a price lower than the price which you would pay for the same item elsewhere, then by word of mouth some advertising takes place so that people finally know about it and go to that store. Now, if you prevent all the small retailers who cannot afford to take publicity, but which the large organizations can afford, from using that device to keep some of their local clients interested, that is by having at times one given product at a lower price in their stores, than they will find it in other stores, would you not by the same token favour the large organization which has large publicity budgets as against the interests of the smaller one, the smaller retailer, who cannot afford such publicity?

MR. SHELLY: Mr. Commissioner, we are not expressing opposition to stores having lower prices on this item or that item; but in what I was pointing out in the brief, here, I pointed out the effect of these concealed methods, and

which nevertheless are a form of advertising and are in an entirely different position from the one you have recited -- where you are speaking of the small operator. But he does not use this type of technique at all.

MR. FAVREAU: But he might have a special which might be a loss leader.

MR. SHELLY: I am not finding fault with that, at all.

MR. FAVREAU: Somebody else would come in and say, "You will have to sell me \$300 worth of that particular merchandise."

MR. SHELLY: That is not any hardship on him.

MR. FAVREAU: But he would not be able to afford it.

MR. SHELLY: He is the one who would be familiar with this formula. And at whatever price he selects for that item, he knows what the effect of that price will be, in so far as that formula is concerned. He knows exactly what position he is in. And the chances are that his cost on that item may be a little higher than that of the chain stores.

Perhaps you are thinking of the chain store stepping in there, and every unit of a chain store coming and buying \$300 worth of that item from that little fellow. But the chain store cost generally would be a little lower than that, so that it removes the incentive.

I would like to say one other thing which

I think you will find interesting in regard to the small man not being in a position to make an impression with advertising, by reason of his limited budget.

Speaking for my own company, we have recommended to independent retailers, and they have followed this advice very extensively, that they take these full-page advertisements of the chain stores and cover up the name on them, and put them up in the store windows, or inside the store. To all intents and purposes, so far as the public is concerned, -- the public knows, of course, that they are not the advertisements of the little fellow. But it is one way of the little man putting across the idea to the public in his community that his prices are competitive with the prices appearing in these ads. And so that is one method of his meeting the situation. That is one inexpensive method -- it does not cost anything, -- and it is pretty convincing.

THE CHAIRMAN: I suppose the net result of the application of your formula would be that no retailer, except by accident, would offer for sale goods at a price that was lower than 5 or 10 per cent, as the case may be, above his cost of acquisition?

MR. SHELLEY: I think, generally, that that is so, yes.

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THE CHAIRMAN: That is really the purpose of it, of your formula?

MR. SHELLEY: Generally, that is so, yes -- with this broad qualification -- and it is not the only qualification -- that, there again, you see the fact that the larger competitor of that little store, as a general rule, has a lower cost on that item than the little store has. It obviously would permit the little operator to cut pretty well right down, and keep right down to his cost price, in many cases, before it would serve as an invitation to anybody to come and purchase from him at that price, less the discount.

THE CHAIRMAN: It might also, in a number of cases, mean of course that a large operator, with the facilities of large scale buying, and the advantage of doing it, if selling at a price around 5 or 10 per cent above his cost of acquisition, he might have a price that was low enough for the little fellow to come and want to apply the formula to him. The little fellow might not have the same means of getting quantity prices. Might that be so?

MR. SHELLEY: Would you repeat that question, please?

THE CHAIRMAN: You might have this situation, that a large-scale buyer, buying in very large quantities and therefore getting the lowest possible price, and perhaps getting a special price, might be selling on a basis

which you would feel would be in keeping, within the difficulties of the formula for him, by not selling anything less than 5 or 10 per cent as the case might be above his cost of acquisition. But still his selling price might be sufficiently low in some instances that it would attract the small dealer, who had not the same large buying powers, to apply the formula to him. It might work out that way, might it not?

MR. SHELLY: There is that possibility. I think in some measure that is so. I would like to mention something else that is related to that, and which I am sure would prove to be the effect of this formula in practice. We would find that the formula produces a bit of pressure on the wholesale level to trim their prices. Because the wholesalers obviously do not want to appear in the position where the retailer finds it to his advantage to go to another retailer to buy his supply rather than buy them from him as a wholesaler. So there is that pressure on the wholesale level to trim their prices -- which is all to the good, so far as the consumer is concerned.

THE CHAIRMAN: But the pressure might be hard on you as a wholesaler, do you mean?

MR. SHELLY: I am not afraid of that. I am sorry that when you were in Saskatoon time did not permit me to take you through our plant. But, had you seen it, I think you would have been

satisfied that I would not be afraid .

THE CHAIRMAN: I was thinking that as you have 37 units of your own, and supply more than 100 others, that perhaps the wholesale function might be pretty important to you; and if that pressure was there you might notice it.

MR. SHELLY: In our situation it would not create pressure, because as I have said we have only one price structure, and that price structure -- and I think this has some value to you -- that price structure, across the board, is lower than these prices, these specials, generally, of MacDonald's Consolidated. That is correct.

THE CHAIRMAN: I think that is all, Mr. Shelly.

MR. SHELLY: Thank you.

THE CHAIRMAN: Now, we have two further briefs both of which were to be presented today. I wonder if we can get some idea of how long we might take to present those briefs. I would prefer, if possible, to complete both of them, if we can. And, if not, it might be better to have one, completed, and the other carry on tomorrow morning, if necessary. There is one to be presented on behalf of Safeway. Mr. MacAulay is here, and I do not know how long it will take.

MR. MACAULAY: Possibly an hour, Mr. Chairman.

THE CHAIRMAN: Do you think an hour would be sufficient?

MR. MacAULAY: I will try to restrict myself to an hour. I am not going to go into all the detail Mr. Shelly did.

THE CHAIRMAN: That is, apart from the questions which you would be asked?

MR. MacAULAY: Yes.

THE CHAIRMAN: And then there is the brief to be presented by the Province of Quebec Wholesale Grocers Association. I wonder who the sponsor is, and how long it will take.

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MR. BOISVERT: Only the time required to read it, and the questioning period.

MR. GERIN-LAJOIE: That would be about half an hour.

THE CHAIRMAN: Have you had time to consider it?

MR. GERIN-LAJOIE: It should not be very long -- possibly half an hour.

THE CHAIRMAN: And I should think the reading of it would take less than half an hour.

MR. GERIN-LAJOIE: Yes -- about 15 minutes. And then the questioning period would be between 15 minutes and half an hour, I should imagine.

THE CHAIRMAN: I think it is perfectly obvious that this Commission will have to sit tomorrow morning. Because there is one further statement to be made I believe by the Director, which I think will take not less than an hour. If we had to take all those three matters this afternoon we would not finish until 8 o'clock this evening, perhaps -- and that would be a little late. It is unfortunate that both of these briefs were to be presented today. Would it be difficult for either of you to carry over until tomorrow morning, if necessary?

MR. BOISVERT: If it will help the Commission, I will be glad to.

THE CHAIRMAN: You can stay over until tomorrow?

MR. BOISVERT: Yes.

THE CHAIRMAN: I do not know whether Mr. MacAulay and his associates can stay that long. But if you can, then I think perhaps we had better dispose of the Safeway brief this afternoon -- and, if time permits, yours as well.

MR. BOISVERT: I will wait.

REPRESENTATIONS:

Canada Safeway Limited,
Represented by:
J. A. MacAulay, Q.C.

THE CHAIRMAN: We will call upon Mr. MacAulay, then, at this time.

MR. MacAULAY: Mr. Chairman and gentlemen of the Commission, I wish to make a few preliminary observations following which I shall present the one brief, and then I shall deal shortly with the brief submitted by Mr. Shelly.

After listening to Mr. Shelly I am surprised that Safeway has any business at all in the province of Saskatchewan, especially when his operating methods are so above reproach, and he is out to fight the battle of the other fellow.

But, I divide his brief into three parts. I say it should have been divided into three parts. In the first place, it consists of pats on the back for Mr. Shelly and his organization.

In the second place it consists of attacks upon Safeway; and I think that I might submit, Mr. Chairman, with deference, that a part which should have been included is entirely missing -- that is, I suggest it would have been constructive and it would have assisted the Commission if Mr. Shelly had come forward and had given the same information in regard to

his operations as Canada Safeway Limited did at the time it appeared before the Commission in Vancouver, namely a brief of some 49 pages, together with schedules.

We know nothing about Mr. Shelly's figures, or Mr. Shelly's operations, or Mr. Shelly's methods of pricing. And therefore we are not in the same position to direct the attention of the Commission to certain matters in respect of which we would like to direct their attention, if that information and those figures were before them.

And I suggest to you, Mr. Chairman, that this appears as an original submission. When I asked your permission to appear before this Commission for the second time, I said I wished to appear to answer any questions the Commission directed to me at the time of our original presentation, which we were unable to answer at that time.

In other words, if the Commission wanted information which we did not have available, we wished to have an opportunity to assist the Commission by submitting the information at a later date. And then, in addition, I said that in case any parties in presenting their briefs made any attack on Safeway or on Safeway methods, of merchandising, I would like an opportunity to appear to answer those charges at this time.

I knew nothing about Mr. Shelly's brief

until 4 o'clock yesterday afternoon. The whole material refers to alleged practices -- what he would call improper practices, no doubt -- in the trading area of Saskatoon.

Immediately I learned this, I attempted to get in touch with our district manager in Saskatoon, but he was in the United States on holidays. And I was only able to get Mr. McKey here this morning. He arrived at the Chateau Laurier after I had left to attend this meeting.

You will recall that in Vancouver I had four employees of the company with me -- one, the divisional manager, one the price maker, and one the district manager, each of whom was available to answer any questions which the Commission or the Commission counsel saw fit to direct.

And so, might I suggest, that in order to submit what I consider is an original brief at this time is most unfair. This is a brief that -- well, if Mr. Shelly or the Retail Merchants Association, or the Retail Merchants Association of Saskatchewan wished to submit a brief of this nature, then I submit that it should have been presented in Saskatoon, where we had the evidence available, and where we could have produced the books and the witnesses to answer the questions.

I did hear last week -- no, it was the first of this week -- of a document which Mr. Shelly sent to the Commission. It was only

a circular, and it came to my attention only Monday, of this week. It was directed to O.K. Economy and associate stores, and he concluded by referring to this peaches transaction, and so I called for the information in respect to that. And he also referred to this Edwards coffee matter, and I called for the information with regard to that. I think I have the information in regard to those two matters with me. And he concluded by saying this:

So far as O.K. Economy stores are concerned, it continues to be our policy to preserve one of the same price for all customers in any given town or city. If from time to time we have an over-supply of this or that fruit item, it will be advertised and sold as such so that all customers will have access to such bargain of fruit in whatever O.K. Economy unit they happen to shop.

As for Shelly Brothers wholesale price, it is at all times identical for all city and country O.K. Economy and associate stores.

And I thought that, aside from those two matters to which he referred, and in respect of which I obtained the information that this was some advertising that he was doing among the storekeepers in Saskatchewan, and

was just another pat on the back for O.K. Economy stores. So I did not take it seriously; I thought the only two matters when I arrived here in respect of which I would require to give information would be the peaches and the apricots and the coffee.

And then somebody asked me if I knew that Mr. Shelly had filed a brief. I was asked that yesterday. I said, "Oh yes, I know Mr. Shelly has filed a brief." And that was the document which I thought was the brief, because he said on the document that a copy had been sent to you,,sir, as chairman of this Commission.

So we arrive here yesterday in the circumstances which I relate, and we find a 38-page document, which it takes Mr. Shelly one day to present. There is not one reference to the business of Shelly Brothers, not one reference-- and there is not one figure. There is a criticism of our pricing methods in the brief. There is a criticism of this and of that.

Let Mr. Shelly be fair and give the same information in regard to Shelly Brothers, and not present a brief which constitutes only a pat on the back for Shelly Brothers, and an attack on Safeway. Let him come along and assist the Commission by giving them -- the Commission -- the same information in regard

to Shelly Brothers as we did in regard to Safeway. And, since Safeway has been singled out for special attention, I suggest it would assist the Commission if they had that information, too, from Loblaws and from Dominion stores. I think three or four sets of figures would be very revealing and might be of great assistance to the Commission.

There have been statements and examinations and cross-examinations by various persons in regard to the person who presents this brief. It is signed "Retail Merchants Association of Canada (Saskatchewan) Incorporated and National Foods Division of the Retail Merchants Association of Canada, Incorporated." Now, Safeway does not belong to any retail merchants association. And they do not belong to any retail merchants associations for obvious reasons. They refuse to be parties to any trade association or any other association, or members where there is any possibility of prices being discussed at meetings. And so we are not a member of the Saskatchewan Retail Merchants Association. I wondered if we were a member of the Canadian Association, but I discovered that we are not.

Now, we obtain some bulletins from these organizations, just to know what is taking place. We do not want them to think that we are obtaining those bulletins at the expense of

somebody else, and we do make some contributions to the upkeep of certain provincial retail associations. But we absolutely refuse membership for the reasons I have mentioned.

Now, when I saw this brief this morning, or yesterday, I was really very happy that that was the situation. Because I cannot imagine a responsible association across Canada filing a brief which indicates that it is on behalf of the National Foods Division of the Retail Merchants Association of Canada, 50 per cent of which represents an attack upon Safeway and 100 per cent of which deals with the Saskatoon trading area. Now, can you imagine a national organization filing a brief of 38 pages and dealing only with one trading area, a very small part of Canada?

And so, I subscribe to what has been said, that there was some committee that met in Edmonton and, after reading the proposed formula of Mr. Shelly, they said, "We will go along with that formula." I do not know how many people were present. I would say that there would be very few. And I suppose what happened after that was that Mr. Shelly saw the representations we made, or had an opportunity to peruse the representations we made in Vancouver, and he prepared this brief -- because it came out that Mr. Shelly did prepare this brief. When Mr. Commissioner Whiteley put the question to him

and asked him about the D.B.S. figures, he said, "When I was preparing the brief." That is the first time there was any intimation as to who had prepared this brief. And there has been no intimation that anybody else outside of Mr. Shelly had anything to do with the preparation of it.

I doubt if, after this brief was prepared, the committee in the first instance -- well, the committee in the first instance likely gave its approval to the formula. And then I wonder if anybody more than a couple of officers of an association which is supposed to have 54 members, saw this document. And if they did, then I think there are enough red-blooded men in Canada, members of the Retail Merchants Association, to stand on their feet and say, "If this is a national association presenting a brief, then we are not going to relate it entirely to the Saskatoon trading area."

And so, Mr. Chairman, I have a suggestion to make. I would like to have the opportunity, if the Commission thinks it is relevant -- and the Commission may not think it is relevant because the Commission may feel that what they are interested in is constructive suggestions in regard to retail operations. And if that consists of one competitor attacking another competitor, then perhaps I should make this request. If the Commission feels that is not part of, or is not

relevant to the inquiry, then I will not press the Commission for the right to file an answer to this brief.

But I am going to throw out a challenge to Mr. Kelly -- Shelly, rather. I am going to say to Mr. Shelly: "Mr. Shelly, you come along, and you present the figures, the markups on every item. You present the Commission, in order to assist them, with all the information Safeway did, as is complained in the Safeway brief." And then we can examine that document. Why, we might stoop to take the position that he took here, and we might prepare an answer along the lines of his. Because my friend Mr. McKey, whom I have seen only since this morning, tells me that if the Commission is interested, in many many instances, on the part of O.K. Economy stores, we can prepare detailed answers to this, and supply it to the Commission.

I challenge Mr. Shelly to request the Commission for permission to file a brief, with all the information in connection with his operations, the same as we did. And then we will both appear here, with our witnesses, and perhaps we can help the Commission very substantially.

I say that, this being an original brief it should not have been filed at this time. There should have been notice to us that it was going to be filed. Mr. Shelly knew a long time ago, and the Retail Merchants Association knew

a long time ago.

Why, they even go back to 25 years ago to quote what Mr. M.B. Skaggs said, who was president of Safeway 25 years ago. They even go back 25 years and quote Mr. Skaggs. And then they quote what somebody said in 1940 -- "I will buy out your stores; and if you say no, then dire results will happen."

Well, if he is referring to an inquiry which took place in Saskatoon in 1940, at the instance of some merchants there who wished discriminatory legislation passed against Safeway, because they were too competitive, then the gentleman whom I suspect made the statement has not been with that company for 14 years. And I do not think that the conversation is just as it is related.

But, so that we would have no difficulty, when Safeway came here there were a number of retail organizations who were having difficulty in conducting their operations. And in many instances -- in most instances -- they approached Safeway to see if we would buy them out. The brief covers a lot of territory, but what it has to do with that, I do not know.

Now, I suppose I should be very much flattered that these attacks are made upon Safeway, because it indicates that we must be very competitive and that the other fellows are having to be on their toes in order to compete with us. The last experience we had with Mr. Shelly was at the time of the

Dominion Trade and Industry Inquiry. And if these matters mentioned in this brief are the only matters that can be assembled over a period of 14 years, then I think that Safeway has a very excellent record of operations.

But I say that we are in the habit of submitting to attacks like this in the territory in which we operate. In fact, Mr. Shelly pats himself on the back for his association with the Wartime Prices and Trade Board. I really felt that matter could have been dealt with more quickly. I will add only one sentence, that I was asked in the same way to be on the bread administrator's advisory committee, and when Mr. Donald Gordon sent out an S.O.S. in 1942 to business asking how he could maintain the price ceiling, Safeway was the first organization that appeared with a brief with constructive suggestions in it. I can say that in one sentence; I do not have to take two or three pages to say it.

And, just to give you an idea -- and this is just to give you an idea of a certain situation -- if we want to discuss ancient history, they had a situation in Saskatchewan where a store had to sell milk at one cent over the wagon distribution price. That is the extent to which the milk distributors controlled that situation. In other words, for the privilege of going to a store and buying a quart of milk, and carrying it home, you could pay one cent over the price

at which it would be delivered to your home.

Safeway said, "Why, we know that that has not happened any other place on the continent, and we are not going to submit to that." We said, "We will sell at the wagon distribution price" -- which we did. We were threatened with all kinds of actions. I said, "I would just like you in war time to take action against Safeway for selling for too little, when there are people who are only too anxious to get food for less, and who are needing milk. So you just go ahead. It is an anomaly, and it should never have been written into the milk board provisions. And so you just lay the charge against us for selling milk at wagon distribution prices, instead of one cent above."

That is just an instance. I do not know where all these other merchants in Saskatchewan were, or why they did not hold up their hands and contest a situation like that. But they did not. And in Winnipeg, because we wanted to sell for one cent below the wagon distribution price there was a milk inquiry ordered, and it lasted for three months. There were nine lawyers involved -- eight of them on one side, and I was on the other. And we emerged with a one-cent differential. And now we have a two-cent differential. And the only reason for that -- the only reason Safeway went into the milk business in Winnipeg was because the home distributors

refused to recognise the cash-and-carry principle, namely that anybody who requires to, or who needs to, or who wishes to perform part of the service himself should get the benefit of it. That is the cash-and-carry principle, and that is the principle **for which we have been fighting.**

And we have been fighting in Vancouver for the last two or three years. Those people who operate monopolies -- they die hard. And so we had to fight for about three years before we had controls above the producer level removed. And now, instead of paying the same price at the store, you pay two cents less at the store, and there is a recognition of the cash-and-carry principle.

So we had a bread inquiry, because we wanted to sell bread for less than they sold the home delivery bread, and there was a bread inquiry which lasted for six weeks. Safeway was on one side, and everybody else was on the other. And we emerged with a price structure whereby it was recognised that bread could and should be sold by stores. But when that subsidy was taken off flour and we were asked to attend a meeting so that it could be decided what price should be charged for bread, now that the subsidy was gone -- "You fix your price, and we will fix ours." And that is an intimation of how we say, that so far as pricing is concerned, we have nothing to do with it.

Now, we cannot understand a national organization being **a party** to or signing a document like this, supposedly representative of the national food industry in Canada, and it deals only with the Saskatoon trading area -- except where they refer to our Money Man in Calgary. And I will tell you about that after -- our Money Man. I think that is the only time they stepped out of the Saskatoon trading area.

And that, Mr. Chairman and gentlemen, is the place where Mr. Shelly has 37 stores -- O.K. Economy stores -- and that is the place where he has a wholesale warehouse, and that is a spot in which he is vitally interested.

He cited our profits to you this morning-- \$2,800,000 last year. But he never told you one word about his own organization. He never told you one word about what O.K. Economy stores made for one year in the last 14 years. He never told you what his warehouse made one year in the last 14 years, either. And all this information, so far as Safeway was concerned, was not only public, but it was made available to you gentlemen out in Vancouver. And I submit to you that there is a very very pertinent piece of information of a financial nature which you would have to have in regard to the Shelly operations before you could relate his representations to his operations, or before you would understand the reason for the observations which he makes, and for the attack which he has made upon Safeway in this document.

Now, I say that we are used to people attacking us. We do not mind that at all. In fact, I want to congratulate Mr. Shelly upon some of the good advertising he gave us. Of course he did not intend it as such, but there it was.

And there was another thing: He said, "\$2,800,000 going to the common shareholders of this company -- going out of Canada." Well, what do you think of that? And he seemed to be very proud of himself that he knew the figures. Well, if he had asked us for a statement any day in the week, we would have given it to him. We give it to everybody else. We give it to the banks with which we do business. And he forgot to observe that all our preferred stock is owned in Canada, and the earnings on that preferred stock go to Canadians. He did not say anything about that. And he forgot to observe, too, that possibly we paid in income tax approximately the equivalent of the amount available -- that is, to the Canadian income tax authorities -- approximately the amount that was available for dividends to company stockholders. And, besides that, to say nothing about all the municipal taxes, and other taxes that we would pay.

And, oh yes, he referred to us as an international chain. I suppose that is to create the impression that our roots are in California or Kalamazoo, or some place else. Now, why he would want to cast aspersions, or to refer to

an international chain, or to a company, some of whose money goes to the United States, I cannot understand. But he does that in criticising us like that -- even criticising the sources of our money -- he does that and he is building himself up. Because here is a Saskatoon or a Saskatchewan-owned enterprise. All right; let him tell us how much money he has invested in it, and how much they are making while they are doing business in this very, very proper way. And I think it would be a very satisfactory figure, indeed.

We can treat these wholesalers in this big-hearted way. Here, he sells his wholesalers. He can carry on his business in any way he likes. It does not matter to me whether he takes his business in the wholesale department or in the retail department. It does not make a bit of difference to me. And it is none of his business, either, if Safeway wishes to have MacDonald Consolidated act as its purchasing agent for the goods it purchases on behalf of Safeway. And MacDonald Consolidated, so far as their prices to independents are concerned, are competitive with Mr. Shelly in selling to other independents. Otherwise how do they stay in business-- that is, MacDonald's Consolidated. And why does not Mr. Shelly get all the business?

Now, I intended to refer to notes, but I will just go on as I am, and then I shall look at them after. I was only able to make a

few notes when Mr. Shelly was presenting his brief.

Now, Mr. Shelly says that you can often tell what is going to happen in Saskatoon by what happens in Vancouver.

Now, I think I explained to the Commission when I appeared before it in Vancouver, that, so far as Safeway operations in Canada are concerned, we have two divisions. We have two divisional managers. One is resident in Winnipeg-- Mr. W.J. McCann, and he is in charge of the operations from the head of the lakes to the Saskatchewan boundary. I am referring to the far boundary. The other man is Mr. W.J. Kraft, who appeared before the Commission and answered questions. He is divisional manager in charge of the operations in British Columbia and Alberta.

It is one of the company's rules that these two gentlemen cannot confer. They are not allowed to confer on company problems because if we had two divisional managers and one was a strong man while the other was weak, and questions were directed to them, upon which they conferred, you would always get the answer from the strong man, and the other fellow would stop thinking. And if these fellows answer the questions on their own initiative, in that way you discover whether or not you have proper management in both divisions.

And so these two gentlemen do not confer. And therefore it would be impossible to have what Mr. Shelly suggests. Mr. McCann in Winnipeg is

responsible for the operations in Saskatoon, and he does not know what happens in Vancouver. He knows nothing about it. And so Mr. Shelly says, "I got the Vancouver paper, and I saw where they were going to give a coupon or a credit of \$2.50 for every \$20 worth of merchandise purchased, over a limited period of time. So I thought I would be smart and beat them to the gun. So I advertised in Saskatoon. Seeing it in Vancouver, I thought it would be only a little while before it would be in Saskatoon. So I advertised that if any food chain issued that credit slip we would double it." And this advertising persisted. And, the operations in Saskatoon, not being directed from Winnipeg, nobody ever thought of the division doing its own thinking, and nobody ever thought of issuing that coupon. And so a number of our customers began joking about Mr. Shelly, and saying, "Well, Mr. Shelly had to wait a long time for you to give that credit, so he can give credit double." And Mr. McKey told me at noon that after it had gone on for several weeks they thought they had better give Mr. Shelly an opportunity to give away double, seeing that he had advertised in advance before the snake bit him. And so that was the way that happened.

That is the explanation of that episode. He was so very clever in beating us to the gun on something that was going to happen in Saskatoon, that that is what happened. That is the explanation of it.

Now, there is the Money Man. Let us talk about this Money Man for a little while -- and I must apologize for taking up your time on this thing. I am not going to deal with all of these points. I am not going into it very exhaustively. If you want me to deal with them all, and if you want me to pick holes in Mr. Shelly's operations, and to make the same kind of complaints against him as he has made against me, then let him volunteer to file his brief with this financial information, and then fix another day for us both to come down here and both to pull each other to pieces -- or build each other up, whichever it happens to be at that time.

Now, what about this Money Man? I do not know that I can put my hands on it, but I do not know why he went to so much trouble to over-exaggerate the matter. It was the 25th anniversary of the company's opening in Calgary, and the supplier companies agreed to provide this fund. Now, Mr. Shelly told you that all or some of these supplier companies were companies which were associated with Safeway. And Safeway went to the Dominion Trade and Industry department in Edmonton, -- in Calgary -- to inquire if there was any harm in this proposal, and they were given the go-ahead signal, that nothing was wrong with it.

They said, "Listen to the silver quarters." -- Or something like that. Because

their twenty-fifth year, their silver anniversary. So they said -- well, it was just a chance. You knock on the door, like these things you hear over the radio, and someone may happen to call and say, "Have you been listening to the radio?" In this case, if they happened to call at the door, and you had one of these things there, then I guess you got 25 cents. That is the way it is explained. And for every one of these products you had, you got 25 cents. And so Mr. Shelly says that, seeing that there were 16 products involved, if anybody happened to have the whole 16 of them -- well, he is certainly drawing a long bow there -- you would give away \$4 for \$2.79 worth of merchandise.

Now, I happen to know the amount that was obtained in that way. And so on the basis of Mr. Shelly's calculation our total merchandise sale in connection with the anniversary sale, was \$697.50 -- that is, if you figure in Mr. Shelly's way, taking the amount that was given away, and figuring \$2.79, and so on, and so on. So, if his figures are right, then we only sold \$697.50 worth of merchandise.

But his figures are not right. You might as well say this, "I am selling you this ticket for a sweepstake. You are going to get \$25,000 if you win. And I will guarantee that you win if you buy this ticket for \$1."

That is the only instance where Mr. Shelly went outside the Saskatoon trading area

to criticise us.

Now, I must hurry along, or I will be longer than my hour. Mr. Shelly also got worried about these peaches and apricots. I have a letter here written by Mr. McKey to Mr. McCann, in connection with the bulletin issued by Mr. Shelly, and it states:

Further to our letter of September 8, regarding the above subject, and in answer to the questions raised in Mr. McKey's letter to you of September 13, we wish to comment as follows:

The Saskatoon purchases of presering items for the period in question was not any greater in proportion to the previous year excepting for a normal anticipated sales increase.

However, with the continuous poor weather and road conditions, there was a considerable accumulation of case fruits which required prompt clearance. For this reason, the locations were asked to watch carefully for mature condition, and instructed to use their best discretion to avoid a backlog of over-mature fruit which eventually would have meant a greater monetary loss to the company.

These instructions were passed on to the locations in view of the president's

operating bulletin number 176, which states that, "merchandise should be reduced to clear while it is still fresh, and before it becomes evident that a much greater reduction would be necessary should the items in question become off colour."

We would also like to stress the fact that items in question were still in good condition, but had reached the stage of complete maturity. At the same time, it was not our intention to disrupt the prices on top quality goods and for that reason we maintained our competitive prices in advertising.

We trust the above information will enable you to clarify our position in regard to the Shelly bulletin.

Now, there is more to it than that. I have a copy of a letter here written by a lady from Brock, Saskatchewan, as follows:

Last Thursday I purchased among a \$16 order one case of peaches. Of which there was not one nice peach. These looked lovely on the outside but were juiceless and sort of stringy and discoloured inside. You just could not can them, and there was no taste. If I had been in Saskatoon I would have returned them. I feel I should have an adjustment on these in ten days. They were California

Elbertas. Please reply as soon as possible.

This is the letter from Mr. Smith, -- Mr. G.A. Smith -- who is the produce clerk at store number 304 in Saskatoon, as follows:

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Re inquiry on preserving fruit prices on August 9 and 10, 1954.

On Monday August 9 I had sold over-ripe preserving fruit at reduced prices as outlined in distress selling practices.

On the day in question, August 10, 1954, there were no reductions whatsoever on top quality preserving fruit. The advertised prices were strictly adhered to in location number 304 on 20th Street.

In regard to the phone call to our Second Avenue store, this is a courtesy extended to our customers in order to answer their questions fully.

And then the following postscript:

On August 10, 1954 it was necessary to refund the purchase price on some of the merchandise which was sold at a reduced price in our location on August 9, 1954. This was due to the fact that some of the fruit was too far gone for good preserving.

And then there was the suggestion that at one place -- and this fruit was off colour.

As soon as our competitors found out that we were selling off-colour fruit -- and the lady explained it in her letter, the original of which I shall file with the Commission. She said that it looked all right on the outside, but that when you got into it it was stringy and pithy, and all the rest of it. And so Mr. Shelly claims in his letter, that the fruit looked all right -- that the fruit looked good. And this is just what happened.

There is also the suggestion that we sold at one store, and that we took a dollar off. Now, -- oh yes, there is the suggestion that we were selling it, but if somebody inquired we gave them a lower price. The point is that so long as this fruit lasted, and there was a little carry-over on the following morning, we gave them the two at the reduced price of \$5.18. And if they took the good fruit, the fruit that was not mature, they paid the regular price.

Now, it is suggested that we were discriminating among customers. The fact is that we were not discriminating among customers. People who got the good fruit paid the proper price. Some said, "I thought you were selling it yesterday at \$5?" "Sure, we were. Here, you can have this. We have some cases left."

For us to come here and take up the time of this Commission -- well, I apologize.

I am absolutely ashamed that we should come here with these petty things before this Commission. Surely to goodness there are bigger issues than that in this problem -- larger issues.

We tried to place those issues before you when we appeared in Vancouver. And we were not representing the Retail Merchants Association then, either; we were representing our own operations.

And there was one other thing I intended to say in regard to some dividends going to the United States, -- which seems to be a crime! Oh, we love to get American money up here, or money from England! We just love to have them buy our products, buy our raw materials! We love this money to come up here in order that it will provide labour and jobs! Why, we will sell them corner lots and try to get great big prices for them, and we will sell them all kinds of material. And they will carry on for 10 or 12 years and not make a nickel. But the minute they start to send one dollar out of this country, no matter where-- and it seems to be a greater offence to send it to the United States than to anywhere else -- I say the very minute, after all this struggle and after doing all this, the very minute they begin to send one dollar out of the country, then that is terrible! It is terrible! It is money going to the United States! "Whereas my money? -- Well, I am operating in Saskatoon. Mine stays in Saskatoon."

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Let him tell us how much stays there, what he does with it and all the rest of it, and supply the same details as we supplied.

Now, we are trying to bring gas from western Canada to eastern Canada at the moment. Where do we go for our financing? Otherwise how long would we be waiting for gas in eastern Canada? Well, we might be waiting a little longer. But the attempt is to finance that in the United States. Oh, we do not object to American money coming here for all kinds of investments, to develop our oil, to develop our mines. But once you start something and go through the pioneering period, then the minute you send one nickel across the country, you are an international chain, and you have committed a grave offence! That seems to be the line of argument of some people.

Now, about this coffee. This coffee was \$1.41. There is a date put upon it, after which it must be sent to the warehouse. It must be returned to the warehouse because it cannot be sold after a certain period. It does not reach the company's requirements or the standards of freshness. And so it was observed -- and it is somebody's job to know these things -- that there were 80 cans of coffee in the store at 4 o'clock in the afternoon which had to be returned to the warehouse next day. And it was explained to the customers that the price of this coffee

was to be dropped for that afternoon, and to dispose of it it was dropped from \$1.41 to 99 cents. That was merchandise that was going out of date. All this was explained to the customers.

Now, I may wish to make a few observations on the general situation at some later time. I doubt if I would wish to say very much, though. Perhaps I shall do so after I submit this brief.

THE CHAIRMAN: Well, if you are going into another subject, perhaps we might take a short recess.

--- Recess.

--- Upon resuming.

THE CHAIRMAN: You may proceed, Mr. MacAulay.

MR. MacAULAY: Mr. Chairman and gentlemen, Mr. McKey has pointed out to me during the adjournment that when I was referring to this \$2.50 coupon he said the impression might have been created that I had referred to the \$2.50 coupon in Vancouver. I was just talking about the credit slip, generally. I was not suggesting that the credit slip was \$2.50 in Vancouver. I thought I would just make that clear. It was a credit slip on a certain purchase, but not the same amount as used in Saskatoon.

THE CHAIRMAN: I think you did say it was \$2.50; but this explanation makes it clear that you are referring to the use of the credit slip.

MR. MacAULAY: Yes. I just wish to refer once again to the peaches and apricots. We have a letter from Mr. R.T. Hendy, the head produce clerk in Saskatoon written to Mr. McKey. There was a suggestion that at one other store somebody got a dollar off.

THE CHAIRMAN: A dollar off each box, if you bought two.

MR. MacAULAY: It was the first person who went in and said, "Down town they are getting peaches for a dollar less, in your down town store." I might explain that the down town store is just about two blocks away from the warehouse, and there is more merchandise sent to that store than to any of the other stores. However, this letter says:

On Monday, August 9, 1954, prior to making the statement regarding the Second Avenue store, I had personally inspected the fruit in question, and found the fruit in anything but top quality.

Rather than have the customer leave the location and go down town, I offered the customer the preserving

fruit at one dollar off. Because the location manager was out for lunch and I was not able to discuss the matter with him, I took the matter into my own hands. However, upon the location manager's return, I took the matter up with him and we found it necessary to reduce the fruit in order to clear it in a hurry.

At no time was top quality merchandise reduced to the prices we were selling distress preserving fruit.

To substantiate our decision to reduce the prices of mature fruit. That the fruit in question which was sold at reduced prices was not of preserving keeping quality, it was necessary to refund several customers the prices paid for this fruit on the grounds that their claim was that "This fruit when I started to prepare it for preserving was in such a state that it was useless to preserve."

And then Mr. Shelly said that we were seeking merchandise from other sources. Mr. Mc Key gives me this note:

Mr. Wilson, produce supply manager, does phone all competitive wholesale houses for information on quality and movement.

When I questioned Mr. Wilson regarding requesting other wholesale for supplies on the weekend, he stated that this was not

the case. At the time in question Mr. Wilson had approximately 800 to 1,000 cases in storage.

And so I just wish to clear up those two points, too.

Then, may I offer the following:

The principal submission of Canada Safeway Limited to the Commission was made at the public hearing in Vancouver on July 6, 1954. At the time of that submission, the Commission requested the Company's views and comments on certain specific matters.

Canada Safeway Limited is pleased to present to the Commission its views and comments on the certain specific matters regarding which the Commission at that time directed inquiry to the Company. Accordingly, the present submission is limited to matters regarding which specific questions were asked at the said public hearing.

SAFEWAY IS OPPOSED TO THE PROPOSAL SUBMITTED
TO THE COMMISSION AT SASKATOON ON JUNE 29,
1954, ON BEHALF OF THE RETAIL MERCHANTS
ASSOCIATION OF CANADA AND AFFILIATED
ORGANIZATIONS.

The proposed formula provided that any

grocer (for convenience called A) shall have the right to insist that any other grocer (for convenience called B) sell to him up to \$300 worth of any grocery item at a discount of 10 per cent below the retail selling price of B. For a very limited list of specified items, the required wholesale discount is set at 5 per cent below B's retail price, rather than 10 per cent below. Such forced sales need not be made under special circumstances, as for instance where old stocks are being cleared out at temporarily low prices. Failure to make required sales makes the offending retailer liable for stiff indemnity payments to any retailers whose orders he does not fill.

The simple economics of this situation from the standpoint of A, the buyer, are that whenever 10 per cent off B's retail store price will produce a buying price for A that is lower than the price A has to pay through normal channels of procurement, it will probably be an advantage to A to buy from B.

Some of the possible and probable effects of enacting into law such a mandatory sales formula are as follows:

(1) The effect most objectionable from the standpoint of the public interest

is that it would force all food items (except those very few items on the 5 per cent list) to sell at markups that will yield something in excess of 10 per cent to the retailer.

A large number of important foods now sell for markups of between 5 and 10 per cent. Examples are set forth in the submission previously made by Safeway to the Commission. These items would, by reason of the operation of the formula, be forced above the 10 per cent markup levels -- at an annual cost of millions of dollars to Canadian housewives. Essential foods, particularly, tend to fall in the lower markup categories, and hence would be most affected by the proposed formula.

Such a formula would force up the price of low markup items in the following manner. Fast-moving item X, for example, which ordinarily retails at 25 cents, and which costs 23-1/2 cents, yields a 6 per cent markup. If the retailer selling for 25 cents were required under the new formula to sell to other retailers for 10 per cent less than the 25 cent retail price, he would have to sell to them at 22-1/2 cents less than 25 cents -- in other words, at 22-1/2 cents. Yet the first retailer pays 23-1/2 cents for item X.

In effect, he would be faced with having to sell to his competitors at a loss. The only alternative to selling at a loss would be to raise his retail prices to his customers by a couple of cents. This is the exact effect which the formula is designed to bring about.

Since expense would be involved in making sales to competitors, or in procuring merchandise to be made available to competitors, it would be necessary for retailers to price at levels somewhat higher than those required to yield a 10 per cent markup in order to cover procurement costs as well.

No retailer could afford to be constantly faced with the necessity of selling merchandise to competitors below his cost price. Accordingly, he would be forced to adjust his selling prices to a level sufficiently high to eliminate any attraction to his competitors to take such action. The result would be increased prices to consumers.

(2) The formula would result in placing a penalty on efficient buying. It would force those who buy merchandise efficiently to subsidise those who buy inefficiently.

For instance, carload quantities are

generally the most efficient method of buying because they involve a minimum of handling and transportation costs. Under the proposed formula, any retailer buying in carload lots could be required to sell to any other retailer, in any quantity, however small (such as a half case at a time) at the carload price. As an example, retailer X buys an item in carload lots at a price that amounts to 9 cents a can, and resells to consumers at 10 cents, giving a 10 per cent markup. Any other retailer would be entitled to present an order to retailer X for half-case only and demand and receive the carload buying price! In addition retailer X will be out of pocket the cost of buying, and shipping to his warehouse or store.

It is apparent that if the formula were placed in operation, efficient retailers would be forced to subsidize the inefficient--all at the ultimate expense of the buying public.

(3) It is obvious that this formula would expose any grocer selling at low markups to constant harassment by competitors demanding that their orders for purchase be filled. In effect, this formula could be converted into a convenient device by which groups of retailers could dominate the market by buying up supplies of groceries

that they might consider as selling at prices that were too low. They need not confine their price-raising purchases to items selling below the 10 per cent markup level. Since no one grocer ever handles more than a fraction of the supplies in a market, it would be relatively easy for large groups of grocers to organize openly or tacitly and carry out private retail food price maintenance programs at any level they thought feasible.

THE CHAIRMAN: Do you think that might possibly come under Section 2 of the Combines Investigation Act?

MR. MacAULAY: I think it would, yes. My friend mentioned a little while ago Western Grocers, which owns a chain of its own, and then supplies voluntary chains. They could send word around to all their own stores, and to all their members of their voluntary buying group, and descend upon this party. And if it was \$300 worth of merchandise, they would buy in \$5-lots and each person could make 60 trips in before he got his \$300 worth. They would crowd the fellow out of his store, no matter who he happened to be. But I do think it would come in.

THE CHAIRMAN: It might come under that.

MR. MacAULAY: Yes. Then:

(4) The formula lends itself to being used as a device for serious abuse. For instance, no minimum is fixed on the amount that must be purchased. Anyone with a retail food license could go to any other retailer and demand that he be sold as little as a dollar's worth -- or even less -- of any item in the store at a wholesale discount of 10 per cent. It would be extremely costly for a retailer to fill 100 or more orders a day for only a dollar apiece -- all at a 10 per cent discount. Moreover, there is no limit to the number of repeat orders. If abused in this manner, as is quite possible, the formula could become a highly retrograde step in the retailing field.

(5) The formula is a monopolistic device that would encourage concerted action by groups of retailers to force all other retailers into observing privately prescribed markups. The mere threat to a given retailer that all other retailers would send in a small purchase orders might well be sufficient to make it an adequate weapon by which organized grocers could privately dominate and control prices in their field of retailing.

(6) The formula would be extremely difficult to enforce legally, and could lead to extensive litigation.

Conclusions.

The proposal assumes that there is some loss leader selling in Canada that needs to be corrected by legislation. Such is not the case in food retailing. Loss leadering is so insignificant in food retailing that out of upward of 10,000 classes of food items sold daily throughout Canada, those items alleged to be selling at loss leader markups as reported by the Director of Investigation and Research, number only 29. Safeway submits there isn't any significant loss leader selling situation that requires correction by legislative action.

I was relying upon the Director's report when I gave the information in Vancouver. And more than that, I intended to say, when I was talking about Safeway and MacDonald's, that that situation is also referred to in the Director's report. There is nothing new about that. And since it was in the Director's report, there is no need to incorporate it in any brief here. Then, to continue:

The formula indicates that it is aimed at eliminating loss leader selling. However, the principal result would appear to be to give organized retailers power to force other retailers to raise prices to

at least the 10 per cent markup level, for all except the very few 5 per cent items.

Safeway submits that the proposed formula is a monopolistic device designed to raise prices for the benefit of inefficient food retailers and at the expense of the consuming public. Safeway recommends that the proposal be rejected.

I was very much impressed by the information asked with regard to private brands -- would that apply to private brands, too? People who have private brands go to a lot of expense to develop those brands. And to perfect a private brand -- well, if anybody can come along and take that off their shelves, they cease to be private brands, and that would be also a retrograde step in the food industry, in my opinion.

I have absolutely no quarrel with the independent merchant. I think I said in Vancouver that at different inquiries that were held, the bread inquiry and the milk inquiry in Winnipeg, there were a number of independent merchants who came along and complained about this and that. But there was also that type of independent merchant who came along and slapped himself on the chest and said, "I will compete with any chain store you want to produce. I do all the things I should do. I do not lose substantial amounts by giving credit. I take inventories. I know where I stand; and, so far as I am

concerned, I have the personal touch, because I am there myself."

And so I say I have no quarrel with the individual independent merchant. But I also made the statement in Vancouver, when the question was being discussed, if an independent merchant who is isolated reduces the price of goods in his store, is Safeway going to meet that price, based on its policy of meeting all competition? And Mr. Kraft gave an answer to that. He said, "No, if it is an isolated case, we will give him a little time to get his price back up. But if he does not, we will meet his price in the store in close proximity. And then if it spreads to four or five places, then we are going to meet the price, because it has become general."

Now, the question was asked me about some of the reasons why we did not favour legislation of this nature or of that nature. And I said because -- and this is no reflection upon the independent merchant at all -- I said it was because there was a tendency to enforce the law against the big fellow, but not to enforce it against the smaller fellow. If Safeway is carrying on business in a large store on a main street, where the traffic count is high, and Safeway is open, contrary to the early closing by-law -- well they are open about half an hour before they are visited by a policeman, and they get a summons. But the independent merchant,

he may be on the side street, and he can be open without being touched.

As I say, I have no quarrel with the independent merchant. But, I think these laws are apt to be enforced in those things against the fellow who is bigger and not enforced against the fellow who is smaller. But supposing an independent merchant advertises a price in the circumstances which I have related, and you go to buy \$300 worth of merchandise from him. This is a smaller independent merchant, we will say, who is pursuing perhaps on one or two articles some loss leader tactics, and you are going to try to curb him. . You say, "All right, now, I want my \$300 worth of merchandise" -- and the other fellow does the same thing. What chance in the world have you got of getting it, or when are you going to get it? I submit from that standpoint the formula is not practical, and it just would not work. I repeat that it just would not work.

Now, at the last count I believe there were 775 retail merchants in Winnipeg retail food stores. I believe that was the figure I gave to the Commission the last time. Out of those in greater Winnipeg there are possibly -- Oh I should say, perhaps 75 chain stores. Safeway has 41, and then there is Jewel, and Shop-Easy -- perhaps there are not as many as 75 altogether. And then all the rest are independent stores.

I say that I would not attack an isolated independent who was making a low price. But I would watch it -- that is, I am not watching it, personally; I mean that our employees would watch it. And then if it continued we would reduce the price in the store in close proximity. But if it began spreading, not only on that item-- but if this independent merchant sells this item, and if you are not competitive with this one on this item, and this one on that item, and this one on the other item, then the first thing you know you might have 35 independent merchants, all of whom are selling a different commodity at a lower price than you are.

The first thing you know -- well, you say, "Oh well, you don't need to be too worried about the little fellow, you don't need to pay too much attention to him." But, the first thing you know your customers come in and they tell you, and you lose your competitive position, and you are on the way out.

And so this formula would have to be applied against the independent merchant, to keep this one from lowering the price on this item. And then if you had 35 of them -- what a hope!

Just suppose that five people came in-- suppose that 50 people came in and asked for \$300 worth of merchandise. That would be \$1,800 worth of merchandise. They would have to pay cash, of course. How in the world could the thing be

serviced? How would entries in the books be made? Why, they just do not have the staff to do all these things.

And so it is my submission that the formula is absolutely impractical, for the reasons mentioned in this brief, and the reasons which have been elicited as a result of the discussions in the presentation of the brief.

Then:

COMPARISON BETWEEN INCREASES IN PRICE OF FLUID MILK AND INCREASES OF SAFEWAY SALES OF CANNED AND POWDERED MILK IN WINNIPEG AND VANCOUVER.

At the hearing before the Commission in Vancouver on July 6th, Safeway was asked (transcript Page 2902) as to whether the increases in the sales of canned and powdered milk in Winnipeg following increases in the price of fluid milk, corresponded proportionately to such increases in Vancouver following increases there in the price of fluid milk.

The attached statement, setting forth evaporated and powdered milk sales by Safeway from its Vancouver warehouse, shows the very substantial increase in such sales which took place following the increase in the store price of fluid milk as fixed by the Milk Board from 19 cents to 22 cents in October, 1951. Although the price of

milk in Winnipeg during this period never increased more than one cent at any one time (as compared with the 3 cent increase in Vancouver in October, 1951), the following statement for sales of canned and powdered milk in the Winnipeg zone shows that as the price of fluid milk increased in Winnipeg, sales of canned and powdered milk there have also increased substantially.

SALE OF CANNED AND POWDERED MILK - 1950 to 1953 -

WINNIPEG ZONE

<u>12 WEEK PERIOD ENDING</u>	<u>CANNED MILK IN POUNDS</u>	<u>POWDERED MILK IN POUNDS</u>	<u>SAFEWAY'S SELLING PRICE - FLUID MILK</u>
March 25, 1950	291,648	1,440	16¢
June 17, 1950	359,136	1,296	
September 9, 1950	284,352	1,176	17¢ (Sept.16/50)
December 30, 1950	406,896	1,848	
March 24, 1951	313,248	4,584	18¢ (April 1/51)
June 16, 1951	324,960	9,972	
September 8, 1951	323,184	7,536	
December 29, 1951	451,536	9,516	
March 22nd, 1952	319,200	9,348	
June 14th, 1952	334,080	11,496	
September 6, 1952	286,992	9,600	
December 27, 1952	485,136	14,292	
March 21, 1953	338,688	7,848	
June 13, 1953	320,976	10,452	
September 5, 1953	292,800	8,916	19¢ (Oct. 7/53)
January 2nd, 1954	448,848	12,072	

EVAPORATED AND POWDERED MILK SALES BY PERIODSVANCOUVER WAREHOUSE1950 TO 1953

	<u>EVAPORATED MILK</u>	<u>POWDERED MILK</u>	<u>SAFEWAY'S SEL- LING PRICE FLUID MILK AS FIXED BY MILK BOARD</u>
<u>1950</u>			
1st 12-week period	961,632 lbs.	1,632 lbs.	17¢ qt.
2nd 12-week period	891,312 lbs.	1,488 lbs.	17¢ qt.
3rd 12-week period	832,080 lbs.	1,812 lbs.	17¢ qt.
4th 16-week period	<u>919,968</u> lbs.	<u>8,316</u> lbs.	Nov. 19¢ qt.
	3,604,992 lbs.	13,248 lbs.	
<u>1951</u>			
1st 12-week period	838,224 lbs.	7,092 lbs.	19¢ qt.
2nd 12-week period	691,056 lbs.	12,684 lbs.	19¢ qt.
3rd 12-week period	1,038,960 lbs.	27,900 lbs.	19¢ qt.
4th 16-week period	<u>1,368,336</u> lbs.	<u>71,988</u> lbs.	Oct. 22¢ qt.
	3,936,576 lbs.	119,664 lbs.	
<u>1952</u>			
1st 12-week period	974,736 lbs.	37,716 lbs.	22¢ qt.
2nd 12-week period	866,256 lbs.	34,104 lbs.	Apr 21¢ qt.
3rd 12-week period	941,472 lbs.	32,044 lbs.	21¢ qt.
4th 16-week period	<u>1,302,768</u> lbs.	<u>41,212</u> lbs.	21¢ qt.
	4,085,232 lbs.	145,076 lbs.	
<u>1953</u>			
1st 12-week period	1,057,680 lbs.	34,648 lbs.	21¢ qt.
2nd 12-week period	1,010,256 lbs.	50,472 lbs.	21¢ qt.
3rd 12-week period	986,544 lbs.	37,264 lbs.	21¢ qt.
4th 16-week period	<u>1,390,464</u> lbs.	<u>40,196</u> lbs.	Oct 20¢ qt. (Re- tail prices decontrol- led)
	4,444,944 lbs.	162,580 lbs.	

You will see that in 1950 and 1951 while there was an increase of three cents in the price of fluid milk, there was an increase in the sales of powdered milk from 13,000 pounds to 119,000 pounds. And then in 1952 it went to 145,000 pounds, and in 1943 to 162,580 pounds.

All of this is respectfully submitted.

Then, I submitted the other information in a letter, not as part of the brief, because it was not requested on the hearing. It was supplementary information required later by letter, and it is before the Commission. If you wish me to read it, I will; but it was sent in.

THE CHAIRMAN: I do not think it is necessary to read it. We have it on file. It was simply some supplementary information asked for.

MR. MacAULAY: Yes, it is very short.

Now, I would just like to say one word about this formula. As the discussion proceeded yesterday it appeared that certain things would have to be exempted. To be fair, if you are going to exempt private brands, you would have to exempt perishables. That would be fruits and vegetables. I do not know how it would apply to fresh meats. I do not know how the formula could be applied to fresh meats.

You could say, "You sold a certain roast below cost; you must come across and

give me \$300 worth of a similar roast." Who in the world could do that? Most of these stores would not have many carcasses. They would have to go to the packing house, and they would have to be sure to get the same kind of roast. And, to use a term that was mentioned yesterday, there could be a little juggling done there.

And then, these items that sell at perhaps not more than 6 per cent -- 6 to 10 per cent -- which would be in the 6 to 10 per cent category -- tea, coffee, sugar -- the items that were referred to in the brief as having a traditionally low markup. Well, perhaps you would have to change your formula there. It has been suggested that perhaps the 5 per cent formula would apply to those. But what do you do about milk? Do you exempt milk, too? I think before you got through with your exemptions you would not have a terrible lot left.

Now, I had intended to make comment with what appears at page 17 of Mr. Shelly's brief --

We respectfully caution the Commission against accepting markups shown in Safeway schedules as being reasonable, representative or typical.

That is one of the statements that has prompted me to say, "Well, perhaps we should have Mr. Shelly's figures, the same as ours, so that we could get markups which were "reasonable,

representative and typical."

Now, Mr. Chairman, you will recall that we were asked to supply the Commission with certain information. It was pursuant to that request that we filed our brief, and made our presentation in Vancouver in an endeavour to assist the Commission. And I did not think that in acting upon the Commission's request that we were going to have a brief presented in apparent criticism, such as we have heard.

There are a few things in Mr. Shelly's brief I would like to comment upon. It says:

Loss leadering in central Canada is a matter of operating policy. If we seem to dwell a lot on the Safeway brief it is because we find areas of agreement as well as certain areas of difference. I make no attempt at keeping competitive --

and now Mr. Shelly is talking about a man he spoke to --

I make no attempt at keeping competitive across the board, and despite my loss on loss leaders, I come out with a satisfactory and profitable gross.

Then he says:

We got on the subject of the Saskatoon hearing, and he in effect said to me, "The rapid growth and increased profits in my company can be attributed to loss leader selling. I usually pick about four good items -- a key meat item, a key produce item and a couple of good grocery items, cut the heart out of them, and keep pulling in more and more people into our store. I make no attempt at keeping competitive across the board. Despite my loss on loss leaders I come out with a satisfactory and profitable gross." Now, this operator is frank and above board about his loss leader selling. And he makes no bones about admitting that he takes up the loss taken on loss leader sales on other items.

I say that that fellow is anything but frank and above board; and I say that it was the duty of Mr. Shelly to give the name of that fellow. And then, if he was as frank and above board as Mr. Shelly says, we would know it. And, in performing a duty and attempting to assist the Commission, if the name of that person were given to the Commission, in confidence, the Commission might get a lot of assistance on this problem by just directing a little note to this particular operator and saying, "Now, I suggest that you file a brief, and tell me how you run

your operations." But so long as this fellow remains incognito, I cannot see where the frankness or the above-boardness comes in -- because it is anything else but.

Now, I think I have just about finished.

Mr. Chairman, unless you decide that you would like to ask Mr. Shelly to prepare a brief, and in respect of which I could make my comments, or unless you wish a detailed reply to this brief of Mr. Shelly's -- and I suggest that it should be double-barrelled -- or if you feel that there is anything in this document in respect of which you would like to hear from Safeway, then I will be glad to get the information for you, when I can contact persons who can give it to you. But at the moment that is our submission. I thank you.

THE CHAIRMAN: Then, do you have some questions, Mr. Gerin-Lajoie?

MR. GERIN-LAJOIE: I have only a couple of questions. I would refer you, Mr. MacAulay, to page 3 of your brief, where you state that the proposed formula would force those who bought merchandise efficiently to subsidize those who buy inefficiently. Do you think that there might also be a tendency for aggressive buyers to reduce that pressure to obtain lower prices from suppliers, since they would have to show any price reduction that might obtain with other buyers?

MR. MacAULAY: That is possible, yes.

MR. GERIN-LAJOIE: Would you attach any significance to such a danger?

MR. MacAULAY: Well now, would you mind repeating that? You read that pretty quickly. Would you let me hear that again?

MR. GERIN-LAJOIE: I wonder if you think that there might be any tendency for aggressive buyers to be less aggressive in the future in their buying bargains if they had to share their bargains, if you call them such.

MR. MacAULAY: Yes, conceivably that is a distinct possibility. Nobody is much interested in earning money for the other fellow.

MR. GERIN-LAJOIE: Now another small point which you might clarify. At page 4 of your brief, the third objection, you say, in part:

In effect, this formula could be converted into a convenient device by which groups of retailers could dominate the market by buying up supplies of groceries that they might consider as selling at prices that were too low.

Now, perhaps you would clarify that. And I had this question, originally -- and what I would like you to tell me is in connection with section 4, where you state that since no minimum purchase is required, and

since there is no limit on repeat order, it could
202 111 be used as a method of harassing competitors.
Could not a clause be introduced to deal with such
a situation?

MR. MacAULAY: Yes; I think you could
say that there could not be any repeat order,
and that the purchasing merchant had to make up
his mind right off the bat how much he was going
to buy. But then, that would place the respon-
sibility upon the fellow who was selling to keep
track of everybody who purchased from him. That
is, he would have to have a pretty complete
record before he knew that a certain order was
a repeat.

THE CHAIRMAN: And anticipating quite
a lot of orders.

MR. MacAULAY: Yes, anticipating quite
a lot of orders.

THE CHAIRMAN: If there were only four
or five orders there would not be much difficulty.

MR. MacAULAY: That is right.

MR. GERIN-LAJOLIE: Would you have the
same objection to the formula if the reduction
were, let us say, 5 per cent instead of 10 per
cent -- 5 per cent of every item. Do you think
it would be less reprehensible, in other words,
in your view?

MR. MacAULAY: No, I think the formula
is reprehensible, no matter what the figure is.
It is impractical, for all the reasons I have given.

MR. GERIN-LAJOIE: Because in such a situation, of course, the sharing of profits would be lesser.

MR. MacAULAY: That is right, that is right. But I do not think the thing would work. You might say that it would be less reprehensible, yes, if it were 5 per cent. You could say that. But that is without prejudice to my point, that it is not practical, at all. And you would run into the same difficulty as I mentioned with the independent merchant, that you might not be able to get supplies.

MR. GERIN-LAJOIE: Thank you very much, Mr. MacAulay.

THE CHAIRMAN: I think that completes the questioning of Mr. MacAulay, and his presentation.

REPRESENTATIONS:

Province of Quebec Wholesale Grocers
Association:

Represented by:

Mr. Aime Boisvert, Secretary-Manager.

THE CHAIRMAN: Would you please give us
your name and your position.

MR. BOISVERT: My name is Aime Boisvert,
and I am secretary-manager of the Province of
Quebec Wholesale Grocers Association, Incorporated.

THE CHAIRMAN: Yes, you may proceed.

MR. BOISVERT: Mr. Chairman and gentle-
men of the Board, first of all may I extend my
thanks to you for the courtesy that has been
extended to me in your willingness to sit beyond
the normal sitting hours. I thank you very much
for that.

Our submission is as follows:

In submitting the present brief, this
Association would have liked to follow
faithfully the plan suggested by your
circular letter of March 26, 1954. This
has not appeared expedient under the scope
of our operations and in view of the
particular type of operations conducted
by its members.

Nevertheless, the situation arising
out of loss leader selling gives us matter
for considerable concern. Foremost in our
minds, is the fate of our retail partners

in business, and of our colleagues of the Candy and Tobacco wholesale business. Many of the wholesale grocers in the Province of Quebec are personally engaged in the tobacco business.

Any deterioration in the position of the independent retail grocer is immediately felt by his supplying wholesaler. And the present precarious position of the Wholesale candy and tobacco jobber is, to our eyes, a picture of what might be the wholesale grocer's lot in the long run. In fact, the wholesale grocer owes a temporarily safer position to the extremely varied assortment of his stocks and also to the broad geographical coverage of his operations.

Like you, we are mindful of the fact that in considering a business problem or a solution of the matter under examination, or a legislative measure affecting business, free competition must be the keynote of the business world we want as our own: Freedom of access to the best possible prices for the consuming public; freedom of action for people in industry or commerce and finally, freedom of access to enterprise FOR ALL, in a population among which talents and resources are necessarily -- and normally -- quite unevenly distributed.

The wholesalers of our association find it proper that Governments should

interfere, in the name of public interest, to ensure a just exercise of freedom, when the exercise of that freedom by a few is contrary to, or imperils, the freedom of others.

This theoretical outlook could take us very far afield, and we are using it only to indicate our intention of looking at the matter of loss leader selling as objectively as we shall know how. Needless to say that we shall not attempt to define what, to us, would represent an ideally equitable distribution of "resources, talents or opportunity"! But we should like to humbly submit the following considerations.

DEFINITION OF LOSS LEADER SELLING.

While it might be possible, in respect of certain articles of sale, to agree on an arbitrary definition, a general satisfactory definition appears practically impossible. So it appears, at least, from the report published by this Board in connection with its last Loss Leader investigation.

RESULTS OF LOSS LEADERING.

Besides the grave disturbances imposed upon industry and commerce by loss leader

practices, especially as they have been illustrated in a brief submitted by the Canadian General Electric Co. Ltd. on June 3rd 1954, loss leaders have a property which should deserve government attention in the same degree as incorrect weights and measures or other comparable practices. We quote in part, an editorial article from "Commerce-Montreal", official organ of the Montreal Chamber of Commerce, which, on June 8, 1953, wondered if: "it would not be in order to deny a dealer, the right to induce consumers into believing, through loss-leaders, THAT WHICH IS NOT. According to a concensus of opinions representative of all types of business, loss leaders lead the consumer into believing that EVERYTHING can be had at low prices where they are practiced. Operating results of the businesses indicate the contrary."

Another opinion extracted from a bulletin of the Georgia Wholesale Grocers' Association, Sept. 8, 1953 went like this: "HOW DOES PRICE JUGGLING HURT THE CONSUMER? It traps the consumer into buying unknown, over-priced merchandise. It destroys the consumer's confidence in the value of established trade-marks. It seeks to put the consumer at the mercy

of giant retail monopolies, once the competition of small business is destroyed. And, by weakening the small business economy, it operates against the general public interest."

The same bulletin went on: HOW DOES PRICE-JUGGLING HURT THE MANUFACTURER? In two ways: It cheapens one of his most valuable assets, his trade-mark, the symbol of his good reputation.

When his trade-marked product is made a price football customers think its quality slipping or that it was originally over-priced. Price-Juggling also plays havoc with a manufacturer's distribution system--the net work of stores, small, medium and big, which bring his product to the mass market. Small retailers will drop a price-footballed brand rather than sell it at a loss. This leads to falling sales and cuts in production and employment. To prevent this kind of havoc, various forms of resale price maintenance are used, including fair trade."

Our wholesalers have no intention of advocating fair trade just now. We have wanted to show that abroad, as at home, we find the same eagerness for a fair and equitable allotment of the advantages or implements without which business cannot

be conducted on a really free basis. We would also like to submit that although a complete freedom of action may prove a precious advantage to some, access to enterprise -- and the resulting benefits-- is a basic indisputable right. That right is PUBLIC PROPERTY.

We believe that under business conditions where there exists too wide a discrepancy between the means and opportunities of a group in respect of those of others, in the matter of pricing, business can only evolve towards dangerous centralization. Wherein the general public stands to lose its extremely valuable piece of PUBLIC PROPERTY; its right of access to small business. And we fail to know how one can ever hope to go into medium or large business before first making a successful entry into small business. There is far more, among the hundreds of thousands of small, medium and large retailers of North America, than just a vast assortment of operators of all calibers and talent. These thousands of small businesses are the very symbol of the freedom of access to enterprise. They represent the free choice between a business and a salary. They represent the future medium and big businesses and are a guarantee against the possible monopoly situation that could very well arise out of undue discrepancies

in the matter of pricing.

The access of those thousands to small business, and their chances of success therein, are naturally dependent upon the opportunities that pricing conditions will afford.

REASON FOR PRESENT SITUATION.

In good part, the surge in loss leader practices of recent years is due to Section 34 of the Combines Investigation Act. This prohibits the establishment of fixed resale prices by agreement or otherwise among "dealers" as they are defined in the Act. This, with a view to making for a freer exercise of the business function, than was possible prior to 1952.

We find, according to results reported in many of the submissions made to this Board, that Section 34 simply denies to some manufacturers, the right to exercise a (generally sound) surveillance over the sale of their products, and makes it possible through business practices which are questionable as far as the best public interest is concerned, for another group of people in business to gain control in another way, over distribution.

To put it as the Canadian General Electric Co. brief went on: "Section 34

has taken a control of prices away from a few peoples' hands and transferred it to the hands of a few others".

If it were proven that the general consuming public stands to gain considerably in the long run from Section 34, then we would insist that it be kept intact. Has the standard of living been raised considerably through the public's access to lower cigarette prices and to lower prices on household or luxury goods? We fail to find that Section 34 has in any appreciable way been responsible for a decline in the cost of food, rent, and clothing.

What then, does there remain in the way of consumer advantages, to justify the grave disturbance and chaos imposed upon industry and commerce? Is the consuming public of the opinion that low-priced cigarettes and appliances -- on which it is in advance reconciled with a price commensurate with the value received -- are worth the immediate or imminent banishment of hundreds of business men and their employees?

It does not so appear, and of all the opinions expressed in the report on the 1953 loss leader enquiry, not one had anything favourable to offer on the matter of loss leader selling, not even from loss leader practitioners themselves.

Do not a great many laws owe their existence to no more than such unity of opinion? Do they not so exist in the name of public interest?

We sincerely do not believe it possible or practical to try and correct the loss leader situation other than by recalling Section 34 of the Act. A specific loss leader legislation, to our mind, could be nothing but extremely complicated, and all but impossible to enforce. We firmly believe that a return to the pre-1952 status affords the safest return towards an equitable opportunity for the largest number of people in business and for the consumer generally. The least we can say we are firmly assured of is that in the food field, with which we are more particularly familiar, there would still remain all the competition that a free trade could ever hope to enjoy -- or undergo.

That there should arise cases of combines towards gaining abusive trading positions will always remain a possibility. And we feel confident that the Combines Investigation Act, even minus its present Section 34 can cope with these satisfactorily.

THE CHAIRMAN: Do you wish to add anything, or to make any comment concerning the brief at this time.

MR. BOISVERT: No, not now, Mr. Chairman.

THE CHAIRMAN: Then, counsel may have a few questions to ask.

MR. WICKWIRE: I have only a few questions. What is the extent of your association, Mr. Boisvert?

MR. BOISVERT: It includes 41 wholesalers in groceries, in the province of Quebec.

MR. WICKWIRE: It includes 41 wholesale grocers?

MR. BOISVERT: Yes.

MR. WICKWIRE: It seems to me that your brief, as submitted, deals more with appliances and the cigarette trade than with that of the wholesale grocery trade.

MR. BOISVERT: Well, there are two reasons for that. The first is that in our own wholesale grocery field, as such, I know of very little, if any, loss leadering in that field.

MR. WHICKWIRE: In the wholesale grocery field, you mean?

MR. BOISVERT: Yes. It is only by way of repercussion, and because of the effect of it of our retail trade, which has a direct bearing on the action of our wholesalers,

that we are concerned with it.

203 MR. WICKWIRE: Since the legislation was passed prohibiting resale price maintenance, what has been the effect on the members of your association? Are they still doing as much business as ever?

MR. BOISVERT: Well, with loss leading as practised by the retailers who are in competition, the pressure has been keener on the wholesalers supplying the retailers, for reduced margins.

MR. WICKWIRE: For reduced prices.

MR. BOISVERT: Yes, for reduced prices.

MR. WICKWIRE: There has been more pressure on the wholesalers.

MR. BOISVERT: It is my opinion that, since then, the operating margin for the whole-saler has become more and more critical.

MR. WICKWIRE: Well, on page 2 of your brief you make a comparison between the deterioration in the position of the independent retail grocer and that of the wholesale candy and tobacco jobber. You do that in paragraph two, I believe.

MR. BOISVERT: Yes, in paragraph two I refer to the "Present precarious position of the wholesale candy and tobacco jobber."

MR. WICKWIRE: Yes.

MR. BOISVERT: The wholesale candy and tobacco jobber is threatened with all but extinction, under the present setup.

MR. WICKWIRE: Now, prior to this legislation, did not the candy and tobacco jobbers operate pretty much under the protection of resale price maintenance?

MR. BOISVERT: I would think that they did, yes.

MR. WICKWIRE: And that, as distinct from the wholesale grocers, they sold relatively few articles which were price maintained?

MR. BOISVERT: In the wholesale grocery field?

MR. WICKWIRE: Apart from cigarettes?

MR. WICKWIRE: Yes.

MR. BOISVERT: A number of articles.

MR. WICKWIRE: But relatively few, as compared with the total number handled.

MR. BOISVERT: Yes, comparatively few.

THE CHAIRMAN: You said the wholesale candy and tobacco jobber, prior to the legislation in 1951, operated largely under the protection of resale price maintenance. And did that apply to the candy end of their business, as well as to the tobacco end?

MR. BOISVERT: Mostly to the tobacco end.

THE CHAIRMAN: Mostly to the tobacco end?

MR. BOISVERT: Yes.

MR. WICKWIRE: Am I correct in this, that the candy and tobacco jobber operated under

the protection of resale price maintenance prior to the legislation, whereas the wholesale grocer, for the most part, operated his wholesale grocery business under competitive conditions.

MR. BOISVERT: Moreso, yes.

MR. WICKWIRE: Much more so?

MR. BOISVERT: Yes. If we were to compare the two operations I would say that there was infinitely less price maintenance protection in the wholesale grocery field than there was in the candy and tobacco field.

MR. WICKWIRE: Then, when the candy and tobacco jobbers operate under the present competitive conditions, ~~which~~ I take it they are operating under, for a sufficient length of time to make the necessary adjustments, will they not have made the necessary adjustments to enable them to operate in a competitive market, the same as the wholesale grocers?

MR. BOISVERT: I would not think so, unless they were able to gain access to a wide assortment of other lines with higher gross margins than they enjoy under the present competitive system in connection with cigarettes.

MR. WICKWIRE: And that is the view of your association?

MR. BOISVERT: Yes.

MR. WICKWIRE: At page 4 of your brief you say:

According to a consensus of opinions representative of all types of business, loss leaders lead the consumer into believing that everything can be had at low prices where they are practiced. Operating results of the businesses indicate the contrary.

Now, that is not the view of consumers, is it?

MR. BOISVERT: I am quoting Commerce Montreal.

MR. WICKWIRE: Commerce Montreal. Well, does your association believe that?

MR. BOISVERT: Yes, sir.

MR. WICKWIRE: Well, does your association or Commerce Montreal, know the view of consumers about whether they are deceived?

MR. BOISVERT: Our association to the end of this memorandum, would perhaps not know definitely.

MR. WICKWIRE: I would refer you to volume 10, page 1739 of the evidence now before the Commission, in the brief presented by the Canadian Association of Consumers of Montreal, where question number one is stated in the brief as follows:

Are consumers mislead when prices on particular items are reduced in one store below the prices of other stores

into believing that all articles in the first store similarly reduced?

And the answer to that question is as follows:

We do not believe so. We have seen the suggestion in some of the answers to this Commission's inquiry of last year that consumers are deceived by sharp price cuts on one item into believing all other goods in the stores are equally reduced in price. We are obliged to question the logic of such thinking. It is hardly complimentary to the intelligence of the average customers. When a retailer gets a bargain on one item of a manufacturer's stock does he believe all that stock is also going at reduced prices? If the average consumer were not keenly aware of actual values and prices how would a loss leader item lure them, and where would be the incentive in price competition between merchants?

That is the view of the consumers association in Canada, which does not seem to bear out the suggestion contained in the article in Commerce Montreal.

MR. BOISVERT: Well, I would go along with that opinion as expressed there. In fact the average consumer, or the mass of consumers

are of a mind as keen as the authors of that memorandum.

THE CHAIRMAN: I take it you know the authors, then?

MR. WICKWIRE: The author of the memorandum presented another brief here the other day in which she stated, if I recall correctly, that a group of some 600 ladies in the province of Ontario were asked the direct question as to whether they were in favour of resale price maintenance and the answer was No -- with the exception two, who were in favour of maintaining resale price maintenance. And those two, she said, for emotional reasons, were in favour of it because their husbands were retailers. And that would be a fairly good cross section -- 600 ladies taken at large in the province of Ontario.

MR. BOISVERT: Well, that is so, yes. You will understand that this is being submitted as a matter of opinion -- not necessarily as a matter of fact.

MR. WICKWIRE: Oh yes. On page 6 you say:

When his trade-marked product is made a price football customers think its quality slipping or that it was originally over-priced.

Is that also a matter of opinion in your association, and not a matter of fact?

MR. BOISVERT: You are referring to page 6 of the brief?

MR. WICKWIRE: Yes, the very first line.

MR. BOISVERT: It is also the opinion of our people, sir, and also based on similar remarks quoted in the Canadian General Electric brief of June 3.

MR. WICKWIRE: That is, with respect to small appliances?

MR. BOISVERT: Yes.

MR. WICKWIRE: What has that to do with, or what bearing has that on the wholesale grocery trade, and the articles with which a wholesale grocer deals, or a retailer deals?

MR. BOISVERT: Well, we state at the beginning our concern about the fate of our wholesales, in the long run, because of the development of a situation which already, in the span of a few short years, has asserted itself as vicious and dangerous.

MR. WICKWIRE: But you have told us previously that the viciousnesses and the dangerousness arise out of pressures brought upon wholesalers by retailers for reduced prices.

MR. BOISVERT: Yes.

MR. WICKWIRE: Then, in the same paragraph you say:

Small retailers will drop a price-footballed brand rather than sell it at a loss. This leads to falling sales and cuts in production and employment.

Have you any evidence of that?

MR. BOISVERT: We were quoting here the contents of an opinion. I think I have qualified that statement.

MR. WICKWIRE: But this is still a re-hash of the General Electric opinion?

MR. BOISVERT: Of the bulletin of the Wholesale Grocers Association. And I say farther on that we are using this to show that elsewhere as here, there is concern over an equitable use of the means, either through fair trading or other means of control.

MR. WICKWIRE: In your next paragraph you say:

Our wholesalers have no intention of advocating fair trade just now. We have wanted to show that abroad, as at home, we find the same eagerness for a fair and equitable allotment of the advantages or implements without which business cannot be conducted on a really free basis.

I presume by that you refer to the fair trade laws in the United States?

MR. BOISVERT: Yes, in part at least.

MR. WICKWIRE: In part. What other reference did you have to abroad as at home?

MR. BOISVERT: Well, I am showing that in the United States, as well as here --

MR. WICKWIRE: That they have fair trade laws?

MR. BOISVERT: Yes, that they have fair trade laws.

MR. WICKWIRE: And in some states, minimum markups?

MR. BOISVERT: Yes, right you are.

MR. WICKWIRE: Are you also aware that in Sweden and France they have legislation prohibiting resale price maintenance?

MR. BOISVERT: No, sir, I am not aware of that.

MR. WICKWIRE: Then at page 8 you say:

The surge in loss leader practices of recent years is due to Section 34 of the Combines Investigation Act. This prohibits the establishment of fixed retail prices by agreement or otherwise among "dealers" as they are defined in the Act. This, with a view to making for a freer exercise of the business function than was possible prior to 1952.

You are aware, I know, that in the great majority of the states in the United States they have fair trade legislation?

MR. MR. BOISVERT: Yes.

MR. WICKWIRE: And I think in some 30 or more they have minimum markup legislation?

MR. BOISVERT: I believe so, yes.

MR. WICKWIRE: Now, are you also aware that there has been great growth of discount houses in the United States?

MR. BOISVERT: Yes, I am.

MR. WICKWIRE: Both large and small?

MR. BOISVERT: Yes, I am.

MR. WICKWIRE: Well, do you think that the legislation they have in the United States is effective to stop people looking for bargains?

MR. BOISVERT: To pronounce myself on that score I would have to make a closer study, although the reading I have done recently of the Advertising Age magazine shows that fair trade laws are open to many evasions through discount houses and limitless means of going around the act.

MR. WICKWIRE: And even if you had fair trade legislation or resale price maintenance in Canada would not the dealers, the retails, still get around it by means of trade-ins and phoney, if you like, procedures?

MR. BOISVERT: They might. All we want to indicate in this brief is that loss leadering, since that is the case in point, has become worse and more destructive than before the inclusion of the section in the Act. And therefore it should be recalled, pending the finding of some other means of controlling possible or actual abuses in the way of price maintenance or collusion between manufacturers.

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MR. WICKWIRE: What are the abuses about which you are complaining? Your brief does not say anything about particular abuses. You just say that loss leadering is an abuse, but you do not tell us what it is.

MR. BOISVERT: I am afraid I fail to understand you.

MR. WICKWIRE: Well, what is the type of loss leadering about which the Wholesale Grocers Association of the province of Quebec complain?

MR. BOISVERT: Well, the cut prices of cigarettes, either real or potential.

MR. WICKWIRE: By that you mean cut prices below the manufacturers' suggested retail price?

MR. BOISVERT: Not necessarily. But I am afraid I do not quite follow you.

MR. WICKWIRE: I am sure the Commission would like to know just what forms of loss leadering, or what it is that the wholesale grocers in Quebec

complain about.

MR. BOISVERT: Well, the practice of loss leading in such a way as to draw the consumers into channels of distribution at such a rate that the small independent merchant would not be able to maintain his living and his business, and the fruits of his efforts -- be it for three years or 25 years.

MR. WICKWIRE: And whether or not he is an efficient operator?

MR. BOISVERT: Yes.

MR. WICKWIRE: At page 9 you suggest that there has been an "immediate or imminent banishment of hundreds of business men and their employees" as a result of loss leading; where is the evidence of this sort of thing, or is it a fear, only?

MR. BOISVERT: I had in mind, there -- or I should say that we had in mind -- the fate of Canadian wholesale tobacco jobbers in the province of Quebec, who, with margins of one or two or three per cent are simply unable to remain in business, because the bulk of their business is on tobacco lines. And unless they can obtain a satisfactory return, and unless the small restaurant operator can also obtain a reasonable margin, they stand to disappear from business. So does the candy and tobacco jobber, and his employees.

MR. WICKWIRE: But I understand that, so far as cigarettes are concerned, the evidence is that there are more cigarettes sold every year.

MR. BOISVERT: That may be so.

MR. WICKWIRE: But it is a fear you have, rather than any knowledge you have, of people being put out of business?

MR. BOISVERT: Well, it is a fear, justified by my contacts with the candy and tobacco operators.

THE CHAIRMAN: Do I understand, Mr. Boisvert, that it is your view that there has been extensive loss leadering in cigarettes?

MR. BOISVERT: Well, you see, there we are again at this matter of defining what a loss leader is.

THE CHAIRMAN: That was what I wanted to get from you.

MR. BOISVERT: Well, if you ask me if I would say that the sales by chains of cigarettes are loss leaders, I would have to answer No, because I know that they are not.

THE CHAIRMAN: That cuts down the area quite a bit, then. If the chains are not loss leadering, and if they are the people against whom most of the complaints we have heard have been directed, are there any others you know of who may be said to be loss leadering in cigarettes?

MR. BOISVERT: I cannot give examples.

THE CHAIRMAN: It is very difficult; I can understand that. It is very difficult to produce facts and figures to prove any extensive loss leadering. The effects on the tobacco jobber and the effects on the independent retailer of tobacco may be the same as if loss leadering was actually going on, in that the prices--

MR. BOISVERT: Right you are.

THE CHAIRMAN: -- are so low that they cannot meet them.

MR. BOISVERT: And as a result, we maintain, of Section 34.

THE CHAIRMAN: Well, that may be. It may be the result of Section 34; but if it is not loss leadering, then what is it about which you are complaining?

If that is not loss leadering, then what is the nature of the complaint?

MR. WICKWIRE: Is it deep cuts in cigarettes?

THE CHAIRMAN: Is it the bad effects on the tobacco jobber and the independent retailer, or is there some principle involved in the operations of those who are cutting prices?

MR. BOISVERT: As I said at the beginning --

In submitting the present brief, this association would have liked to

follow faithfully the plan suggested by your circular letter of March 26, 1954. This has not appeared expedient under the scope of our operations and in view of the particular type of operations conducted by its members.

Now, the Restrictive Trade Practices Commission invited our association to express its opinion on the subject of loss leadering, and in this brief we have brought to you our opinion, from a practical position, with respect to the association of wholesalers in the province of Quebec. They have done this as a civic gesture, and with a view to helping all they can.

THE CHAIRMAN: We appreciate that very much, Mr. Boisvert, and we are very grateful that you have appeared before us to make this presentation. We were just trying to see if you could give us just a little more information.

MR. BOISVERT: If it pleases the Commission to indicate the points that might help in bringing to the fore any specific points, then I can assure you that the wholesalers will consider, in a spirit of cooperation, the best opportunity of supplying that information to you. In other words, if in any matter we can be helpful to you on specific points that you might desire information from the

wholesalers, we shall be only too pleased to give you that information.

THE CHAIRMAN: Thank you.

MR. WICKWIRE: I have no further questions.

MR. GERIN-LAJOIE: I would like to say at this point that Mr. Boisvert very kindly consented to speak before this Commission in English, although originally he had intended to do it in French. However the Commission was not organized at this particular moment to take down the testimony in French. As Mr. Boisvert may have had some difficulty either in understanding some of the questions or in expressing his own facts, perhaps your Commission would agree to receive from him -- and may I say that this suggestion does not come from him; it comes from me -- any clarification or correction of his testimony, after it has been transcribed, that he might think necessary.

THE CHAIRMAN: We will be very glad to do that. However we did feel that Mr. Boisvert acquitted himself very well in English. However if he feels that he can clarify any portion of his testimony, then we shall be very glad to have any submission he likes to make to us. He may have a copy of the transcript for the purpose of deciding whether he wishes to do that.

MR. BOISVERT: Thank you. We are here because we were willing to help, and we will do anything additional that is desired. Thank you

for your consideration. Might I add that, actually I thought out the brief in French -- and then I sweated the translation.

THE CHAIRMAN: And with very good results, may I say.

That seems to conclude the proceedings for today. We will adjourn until 10 o'clock tomorrow morning.

--- Whereupon the hearing adjourned until the following day, Saturday, September 18, 1954 at 10 a.m.

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RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 1

OTTAWA

SEP 18 1954

RESTRICTIVE TRADE PRACTICES COMMISSION

In the Matter of
an inquiry
Regarding Loss-Leader Selling

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RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF
an inquiry
Regarding Loss-Leader Selling.

--O--

Hearing held (in public) in the Supreme Court
Building, Ottawa, Saturday, September 18th, 1954

--O--

PRESENT:

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.,	Chairman
Guy Favreau, Q.C., B.A., LL.B.,	Member
A. S. Whiteley, B.A., M.A.,	Member

--O--

APPEARANCES:

Mr. N. W. Wickwire, Q.C.	} Counsel to the Commission
Mr. Paul Gerin-Lajoie	

Mr. R. M. Davidson	Secretary to the Commission
Mr. L. A. Skeoch	Senior Economic Adviser to the Director of Investigation and Research

--O--

REPRESENTATIONS:

Mr. T. D. MacDonald,
Director of Investigation and Research,
Combines Investigation Act.

--O--

THE CHAIRMAN: I think we have completed all the briefs to be presented. I understand Mr. MacDonald, Director of Investigation and Research, has some observations he would like to make and to bring to the attention of the Commission by way of winding up the hearings. We will call upon him now.

MR. MACDONALD: Mr. Chairman, I have here five sets of figures which I thought I should obtain and make available to you in view of some of the submissions that have been made during the Inquiry.

Commercial Failures

The first set of figures relates to commercial failures. A view was expressed by a number of witnesses to the effect that recent price reductions had been a factor in increasing the number of commercial failures in Canada. The field considered to be affected the most was retail trade. For example, one witness stated as follows:

"We have seen, of course, selling going on at markups that we know very well are not sufficient to cover the costs of the retailer doing business. We have experienced in the past 12 months approximately, that is, from some time early in 1953 to the present time, 10 times the number of bankruptcies amongst our dealers as the average

of the 5 years preceding that period. We attribute that very directly in most of the cases to selling on too low a gross."

(Mr. Marpole of R.C.A. Victor)

The first figures that I wish to submit relating to commercial failures are a Dun & Bradstreet table showing the failure rate per 10,000 firms in Canada from 1900 to 1953, inclusive (Table 1). The variations on this table appear to reflect, to a considerable degree, the primary events, during the period, which might be expected to influence the rate, for example, the war periods and the great depression. The rate in 1900 was 140, and in 1922 it reached the high point of 228 after, of course, considerable fluctuation.

That means the high point for the period. I continue:

Thereafter it declined consistently until 1929 and then climbed to the depression high of 161. Thereupon, it declined pretty consistently to 6 in each of the years 1944 and 1945 and then started upwards again to reach 44 in 1953. The last previous year that it attained such a level was 1941 with a rate of 49.

The second set of figures, contained in Table 2, has as its source Dun &

Bradstreet figures as published in The Financial Post, and Dun's Review. They provide a comparison of the number of commercial failures by industry and class for the United States and Canada for the years 1939 and 1949 to 1953, inclusive. Tables 3 and 4, derived from Dun's Statistical Review, show commercial failures by industry and class for the two countries for the first and second quarters of 1953 and 1954. In 1953 the overall rates were substantially increased for both countries. In Canada the rate for the first and second quarters of 1953 was about the same; the rate for the first quarter of 1954 was greatly increased and the rate for the second quarter fell off considerably but was still much higher than the same period in 1953. In the United States the pattern was much the same. If we take, at random, the Canadian category "Furniture, Household Furnishings", the rate increased sharply in the second quarter of 1953, increased sharply for the first quarter of 1954 and fell off slightly for the second quarter; and if we take the United States category of "Furniture and Home Furnishings", the pattern is somewhat the same except that the first two quarters of 1953 show little variation. I have been referring to numbers

of failures as being more relevant to the present issue than total liabilities.

I have referred to numbers of failures rather than total liabilities, because they seemed more relevant to the present issue. But the total liabilities are expressed in the tables, for most of them, too, if you wish to follow them. Then, to continue:

Tables 5 and 6 are based on the Dominion Bureau of Statistics publication: Commercial Failures by Industry and Class. The first table compares failures for the first and second quarters of 1952, 1953 and 1954. In the total figures for the first and second quarters of 1953 and 1954, the same general pattern appears although the figures themselves vary greatly from the Dun & Bradstreet figures, being compiled upon a different basis. The Dun & Bradstreet figures include some actual failures which never come under the bankruptcy and insolvency legislation and therefore are not included in the figures of D.B.S. On the other hand, the Dun & Bradstreet figures exclude a large number of cases which have come formally under the bankruptcy legislation but are not rated by Dun & Bradstreet as commercial failures. Table 6 shows the totals of commercial failures, as defined by D.B.S.,

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under the provisions of the Bankruptcy and Winding-Up Acts from 1950 to 1953 as increasing from 1,302 in 1950 to 1,657 in 1953. These include, from the province of Quebec, 957 and 1,221, respectively, and I believe that many of these are wage-earner bankruptcies that would not be counted commercial under the Dun & Bradstreet classification.

Mr. Chairman, I am always hesitant about putting forward general figures of this kind for the purpose of drawing conclusions as to particular cases. I believe, however, that these figures are as accurate as can be obtained, and in any event my onus is lightened by the fact that I am not putting them before you to prove anything.

It is material which has been referred to either expressly or by implication throughout the hearings; and for that reason I thought you would doubtless wish to have it before you. Then, to continue:

The level of business activity in Canada as in other countries depends, as you know, upon a large number of factors including, for example, the level of investment in construction, in producers' equipment and in inventories, and the demand for export products. Other developments can also affect the level of business activity and the rate of commercial failures, including any substantial change in distributive practices

adversely affecting a particular class of outlet. A difficulty arises, however, when you try to attribute any particular weight to any particular factor. Perhaps you may be able to see in these figures some pattern that is related to the subject matter of the present Inquiry. If so, your analysis will have been more successful than ours has been. In any case, that is a matter for you.

I am attaching to these tables, a number of extracts from American and Canadian journals which remark upon retail failures in the two countries and relate them in part to new entries into business after the last war. They also comment upon the increase in failures in the United States among appliance dealers; and they discuss the increasing role of the so-called "discount house" in that country.

As I remarked before, I am not putting these figures before you for the sake of proving or disproving any set of facts or any hypothesis. It is quite possible that they include cases that were directly affected by "loss-leader" selling. I do not know. Since, however, you would no doubt be inquiring in due course about these figures, I thought that I should put them on the record now so that if any

other person interested in the Inquiry believes they bear an interpretation relevant to the Inquiry, he can submit his views to you.

And that observation, which I have made about the present figures, would also apply to the subsequent data, which you have there, and to which I shall now refer. Then, to continue:

In considering the comparisons between the United States and Canada, it should be borne in mind that the former country has legislation in forty-five out of the forty-eight states permitting manufacturers to enforce resale prices for branded products. Under this legislation, "loss-leaders" would, in many cases, be legally impermissible. Here again, however, arises the difficulty of assigning a particular weight to a particular factor: even if you could narrow the differences between the two countries down to the existence or non-existence of the legality of resale price maintenance, and if, for example, you found the commercial failure figures to be approximately even, you would still be at a loss to know whether this was because "loss-leaders" were not a factor leading to business failure in Canada or whether resale price maintenance was not effective in the United States.

I should also mention, as affecting any

comparison between Canadian and United States figures that the level of business activity in the two countries has not necessarily been the same, year by year, so that even if the same year is selected as an index basis in both countries, the indices thereby derived for future years may not be really comparable. For example, a minor recession appears to have set in in the United States during the year 1949 while the rate of business activity in Canada continued comparatively unimpaired.

Production of Consumer Durables -
(Table 7)

I come now to some figures relating to the production of "Consumers' Durables". This second set of figures was compiled because of the opposing views expressed before the Commission, on the one hand to the effect that price reductions had resulted and would result, through the reactions of certain dealers and consumers, in a decline in production; and on the other hand, that exactly the opposite was the case. The reason for fearing a decline in production was, apparently, the belief that dealers would not promote the sale of the items because of the unattractive margins and that consumers would hold off purchasing in the hope of further price reductions. One

witness put the matter thus:

"The District of Columbia---"

And, as you know, the District of Columbia has no resale price maintenance, like the other three, Vermont, Missouri and Texas.

"The District of Columbia was a laboratory for us."

And he is speaking now about the Sunbeam products.

"We had heard many assertions if the prices were lower more goods would be sold. It doesn't work out that way. In 1952 the sales to distributors were \$613,000 and in 1953 they dropped to \$545,000. This was a drop of 11 per cent in the District of Columbia business. At the same time throughout the United States, Sunbeam, Chicago, business increased for the year 15 per cent.

I take it that there he is referring to the national business. "Sunbeam, Chicago" would mean the Sunbeam Corporation of Chicago. Then:

"The spread is measured by 26 per cent.

We found out to our own satisfaction what happens in an area where there is no fair trade, where we cannot

exercise the right of refusal to sell."

(Mr. Van Melle of Sunbeam Corporation)

If I may digress there for a moment, I would say that we addressed an inquiry at that stage to the Department of Justice in the United States asking

whether they had any information upon this subject. It so happened that the matter came up--and this we learned through correspondence--that this statement was originally made before a Senate Committee, considering a bill for resale price maintenance in the District of Columbia. So that the assistant to the Attorney General was kind enough to supply three statements that had been made before the Committee considering that legislation.

One of those statements was of a more general nature, but two of them are statements of counsel acting for the discount houses, discussing the basis of the figures given in this quotation by Mr. Van Mell and pointing out certain things about them. Those statements you have before you in the file which Mr. Davidson has given you.

Then, I am going back to the views about the effect of the lack of resale price maintenance upon sales. I continue:

Another witness put the matter in this way:

"One of the evils inherent in a system that does not allow a manufacturer to establish and protect his price structure is the tendency of the public to hold off buying when competitive price cutting gets under way. While not of great significance in low priced, rapidly consumed lines, in the case of more costly items such

as major and even minor household appliances, tires, etc., the buying public, by waiting in hope of further price cuts, will refrain from use of such merchandise, thereby reducing the consumption, slowing down demand with its resultant losses in production and wages in the manufacturing and distributive channels."

(Brief of Drug Trading Company)

Unfortunately, data on the retail sales of "Consumers' Durables" have not been available. However, information is available on the level of output for certain broad categories of "Consumers' Durables" and it is to this information, as published by the Dominion Bureau of Statistics, that I shall refer.

I have already mentioned, in connection with commercial failures, some of the general developments that affect the level of business activity, and the difficulty of assigning a particular weight to a particular factor, and especially to what might be called secondary factors. This should also be borne in mind in the present context.

The figures published by the Bureau do not relate exclusively to "Consumers' Durables" because, although they employ this classification, the classification is

based on the overall production of certain industrial groups and sub-groups whose output also flows into other end uses. In general, these manufacturers who submit information on inventory and shipments do not provide a breakdown of their total output. Such a breakdown is provided by only a few firms; for the others, the return is classified according to major type of production in which the firm is interested. For example, a firm which produces household electrical appliances as well as heavy electrical machinery and equipment would be placed in the latter category, if heavy electrical machinery and equipment made up the greater part of its outcome, but in the former category if household electrical appliances accounted for the greater part of the output. Hence, the data reported by the Bureau should not be taken to represent precisely the record for the various sub-groups of "Consumers' Durables" but even with this limitation they do possess, I believe, considerable value for our present purposes.

To try to provide some basis for comparison between the Canadian and United States positions, I shall also refer to material published by The Board of Governors of the Federal Reserve System in the

Federal Reserve Bulletin. The indices used in this material are based, for most products, on output, although, as will be clear from the detailed descriptions given below,---

particularly refrigerators, and so on---

---some of the data relate to factory shipments. The significant difference between figures on output, and those based upon factory shipments which is the basis for the Canadian data, is that variations in factory inventories may cause the two measures to diverge temporarily; output may be maintained in the face of declining shipments if factory inventories are being built up, and similarly shipments may for a short time exceed output if factory inventories are being depleted. We must take the figures subject to this unavoidable limitation.

The following are the descriptions of the four categories of "Consumers' Durables" that are compared; and, in addition, an index of factory shipments and/or output of total "Consumers' Durables" for the two countries is included:

1. CANADA - Motor Vehicles

Establishments primarily engaged in manufacturing or assembling complete motor vehicles, such as passenger

automobiles, commercial cars and buses, trucks and truck trailers, universal carriers and special purpose motor vehicles (ambulances, taxicabs, etc.).

U.S.A. - Autos

Production of passenger cars.

2. CANADA - Radios and Radio Parts

Establishments primarily engaged in manufacturing radio receiving sets, radio transmitters, public address apparatus and miscellaneous radio parts and equipment. Television sets are also included.

U.S.A. - Production of Radio and Television Sets

Radio sets (auto radios, household radios) and television sets (table model TV, console MODEL TV).

3. CANADA - Furniture (Including Metal Furniture and Mattresses and Springs)

Establishments primarily engaged in manufacturing household furniture of all kinds, office and store furniture and fixtures, public buildings and professional

furniture whether wood or metal. This industry also includes upholstering, cabinet making and furniture repairing.

U.S.A. - Household Furniture

Metal and wooden household of all kinds. Upholstered household furniture.

4. CANADA - Refrigerators, Vacuum Cleaners and Appliances

Establishments primarily engaged in manufacturing electrical refrigerators, vacuum cleaners, fans, toasters, irons, water heaters, etc. This category includes establishments engaged in repairing appliances.

U.S.A. - Production of Refrigeration Appliances

Refrigerators, freezers, room air conditioners and factory shipments of dehumidifiers.

Here, I must note another limitation; the various categories are not strictly comparable; but this also is a weakness inherent in the data and for which no adjustment can be made.

You will notice as you read them through that they

are not strictly comparable. Then, to continue:

The comparisons will, nevertheless, I think, provide rough measures of the magnitude and direction of change in "Consumers' Durables" industries in the two countries.

The years covered are 1950 to the first quarter of 1954, both inclusive. The data is in the form of indices based, in the case of the United States on a 1947 to 1949 monthly average of 100 and in the case of Canada on a 1947 monthly average of 100.

You will be familiar with the events that might be expected, to influence these indices including the outbreak of the Korean War and the stocking-up boom that followed; the legislation banning resale price maintenance; the development of the television industry; and the rate of formation of new family units; and I need not refer to them at length.

One could not do justice to an examination of these figures in the time that I have at my disposal. Perhaps one general observation might be permitted, to the effect that the Canadian situation over the period appears to be no less buoyant than that of the United States. Whether or not this buoyancy would have been greater or less in the presence throughout of resale price maintenance is a question upon which I believe

that these figures, taken alone, give no guidance. If, however, others see in them a source of information they will doubtless point it out to you.

A number of rough graphs have been prepared to show comparisons between the movements of the United States and the Canadian categories and I am attaching them in case you may find them of assistance.

Market Saturation - (Table 8)

The third set of figures is somewhat connected with the last set and relates to appliance sales and market saturation in Canada. I obtained these because, like the last set of figures I thought they might be of interest to you in connection with the question as to whether appliance sales are falling off. These figures are compiled by Radio, TV and Appliance Trade Builder. They have to be taken subject to their inherent limitations and the general basis upon which they are compiled is described in the June 1954 issue of Trade Builder as follows:

"Covering the calendar year of 1953, figures involving factory sales have been supplied by the Dominion Bureau of Statistics. Using this data as a basis, this publication has computed the list value of the merchandise, worked out the saturation for each appliance and

carried forward the number of appliances in use after adding 1953 sales. In all cases obsolescence has been calculated as it is recognized that many old and worn out items go out of service every year.

The percentage of annual sales that goes to replace appliances which go out of use was obtained through a dealer survey across Canada to determine what percentage of sales involve trade-ins, and what percentage of trade-ins are resold. In the case of smaller appliances dealers were asked to estimate what percentage of their year's sales replaced worn-out, discarded items. Averages were then worked out from the returns.

The ever-increasing number of new homes always has a tendency to offset the saturation caused by purchases of appliances made during the year and 1953 was no exception. During the calendar year the number of electrical households in Canada increased from 3,222,300 to 3,319,139 absorbing a large proportion of the year's production."

By way of general comment, it may be noted that over the 1950 to 1953 period

covered by the table, saturation increased the fastest in refrigerators, washers and water heaters and that all sales were substantially upward in 1953 over 1952 with the one exception of ironers.

Those figures, obviously, do not stand on the same level as the previous ones, but I thought they would be of interest as having been compiled by a trade journal, and reflecting at least certain interpretations that the journal placed upon the market. Then:

Variations in Operating Costs - Table 9

The fourth set of figures relates to variations in operating costs among independent retailers. Some of the evidence turned upon the question whether or not these costs varied very much and I thought that I should try to get such information as is available.

One witness expressed himself as follows:

"MR. GERIN-LAJOLIE: You believe that this cost should be the same, and is actually the same all over Canada?

MR. KENT: No. I put it this way, Mr. Counsel, that the difference between one company and another company is a matter of probably 2 or 3 per cent, and that is all. It is not a matter of 5 or 10 per cent. There is not that much difference. And if you get down to one firm which does not do very well, whose gross profit

is 30 while their cost of doing business is 29, it is too high.

I must say that I do not completely understand that last sentence.

If in the other firm the gross profit is 30 and their cost of business is 25, they are making a fairly reasonable percentage. But there is not that much leeway, of more than 2 or 3 or 4 per cent, to my mind, in any of these businesses."

(Canadian Association of Radio & Appliance Dealers, Victoria)

The point, of course, of this reply was that if there were no real variations in operating costs, then there would be the less objection to markups being the same for all dealers.

Whether or not the variation within the limits mentioned by the witness would, in itself, be significant, is another matter which no doubt you will be considering.

The only published information from an official source relating to this matter in Canada is the series of studies put out by the Dominion Bureau of Statistics under the general heading "Operating Results and Financial Structure" for various types of retail distributors. The published figures are given in terms of general averages which are broken down in turn into averages for

groups of stores in different volume-of-turnover categories.

We accordingly asked the Dominion Bureau of Statistics if it were possible for them to examine the returns upon which their averages were based with a view to determining the range of individual operating expenses from which those averages were derived. The Bureau did examine these reports for two categories of retailers: unincorporated tobacco stores, and unincorporated appliance and radio stores. In order that the effect of these figures will be understood, and their limitations appreciated, I am going to quote from the correspondence from the Bureau which accompanied the data.

First, it is necessary to understand that the range figures to be quoted do not necessarily represent "normal" operating ranges in these fields. The reason for this is indicated in the following quotation:

" . . . the firms surveyed for operating results were not selected on a scientific random basis. Consequently the firms do not constitute a sample which is representative of each kind of business for the purpose of broad descriptions. It is, however,

a representative selection of firms within the classifications and sub-classifications as published. The published data is in the form of averages presented as a standard for comparative purposes and in this form may be used with a high degree of accuracy for firms within these groupings.

Because this survey requests profits, which cannot be obtained under the authority of the Statistics Act, we are unable to conduct a survey of firms selected on a scientific basis. It is purely voluntary on the part of the retailer. Consequently, the non-response factor would render selection of a random sample futile."

Certain further factors that must be kept in mind in interpreting the statistics were also pointed out:

"Because employees' salaries and wages is a large proportion of total operating expenses, the extent of participation of working proprietors can cause the total to vary considerably. It is difficult to evaluate a proper salary for a working proprietor. Proprietors' earnings and withdrawals are omitted from

"operating expenses" and remain in the "net operating profit before income tax". Therefore, in a small business the owner and his family may operate with little or no employees whereas a larger business would require some part-time or full-time help. Again using "owned" tobacco stores as an example, the "employees' salaries and wages" ratio increases with size of business causing the "total operating expenses" ratio also to increase.

Conversely, the "net operating profit" ratio contains a larger proportion of proprietors' earnings for a small store than for a large store. Therefore this ratio declines as the size of business increases.

These are reasons which account for dispersion of "gross profit", "total operating expenses" and "net operating profit" ratios for an unincorporated retail store."

Finally, reference should be made to certain differences between the published material on operating results and financial structure and the material which is submitted herewith:

The reason for putting this in was so that if anybody was struck by the apparent discrepancy between these figures and ordinary publications of D.B.S. they would understand the reasons.

"The averages do not correspond to those published because of the difference in method of compilation. That is, for your purposes, the averages and range figures are unweighted whereas the published averages are weighted implicitly by sales.---

which is logical, since it was establishments, rather than over-all business that was in issue here.

"As an example, the published gross profit ratio is the percentage of the average gross profit to the average net sales.

Range figures provided for your purposes were compiled in a different manner. The gross profit ratio was computed for each store and the average and range was then determined for these ratios. Therefore, a small store carried as much importance as a large store, whereas published averages, weighted by sales, were dominated by the large stores."

These data are based on 1952 operating results of independent stores.

Since the table refers to a word which will be unfamiliar to some of us, "quartile", I should say something about it. It was explained to us that, to begin with, the individual figures for gross profit, total operating expenses and net operating profit were ranged in order from low to high.

Points were then selected which divided the separate figures into four equal groups, and these points are the quartiles.

This will be quite clear from the table.

Thus, the first quartile is that point on the scale or in the range, below which one-quarter of the total number of separate figures falls; the second quartile is the point below which one-half of such figures falls; and so on. The quartile figures mentioned on the table are those which fall upon the quartile points I have described. Obviously, there are figures both below the first quartile point and above the third quartile point, so that the total range may substantially exceed the range shown on the table; and the latter therefore tends to be quite conservative.

I am afraid that may sound a bit complicated; but I think it is fairly clear from the table itself, and apparently one of the purposes of the method is to get away from the extremes at the bottom and the top which might otherwise throw out or

distort your average.

I do not think that much further comment is necessary. The table covers 34 "owned" tobacco stores and 143 "rented" tobacco stores, all unincorporated; and 34 "owned" appliance and radio stores and 44 "rented" appliance and radio stores, all unincorporated. The total operating expenses appear to run from 5.3 to 12.3 per cent in the case of the "owned" tobacco stores and from 6.1 to 11.9 per cent in the case of the "rented"; and from 13.3 per cent to 21.2 per cent in the case of the "owned" appliance and radio stores and from 14.3 to 29.8 per cent in the case of the "rented".

Retail Trade by Kinds of Business -
(Table 10)

The fifth and last set of figures relates to the level of the distributive trades over the last three years. Since some of the evidence given before the Commission raised questions as to whether there had been increases or decreases in the level of certain distributive trades over this period, we have extracted from Dominion Bureau of Statistics sources figures showing the comparative standing of some 20 retail trades for the years 1951 to 1953. These 20, together with the

residuary classification which is also included, cover the whole area of retail trade.

The total for all trades ranges from \$10,660,500,000 in 1951 to \$11,575,500,000 in 1952 to \$12,092,200,000 in 1953. From January to June in 1954 it fell off 1.5 per cent over the same period in 1953. Unfortunately, figures are lacking for the full half year 1954 in the category in which we are perhaps particularly interested, appliance and radio stores. We can, however, compare the figures for the first four months of each year. Sales for January to April 1954 fell off by 3.9 per cent from the same period in 1953 for Canada as a whole. The reduction in Ontario was 1 per cent and in British Columbia there was an increase of 10.6 per cent.

Unfortunately it did not give the figures for all the provinces. It was just a random selection for which the provincial figures were developed. So I cannot give the same percentages for the other provinces throughout Canada.

Comparing the period, January to March 1954, with the period, January to March 1953, sales fell off by 1.4 per cent for Canada while Ontario showed an increase of 1.9 per cent and British Columbia an increase of 21.3 per cent. Over the years 1951 to 1953 the sales for Canada ranged

from \$210,200,000 to \$254,200,000 to \$278,100,000.

Now, Mr. Chairman, since this Inquiry is drawing to a close I thought it might be useful if I were to make some very general observations about the information and the submissions that have come before you.

I do this with a great deal of diffidence.

I am not going to comment upon the comparative weight of any of these submissions but rather upon the general issues that appear to have been raised. I shall suggest some of the questions that to my mind have to be answered rather than the answers themselves.

It might be well to revert for a moment to your terms of reference which were to study the prevalence and effect of "loss-leaders" and to recommend what legislation, if any, is desirable to deal with the practice.

Next, it may be appropriate to remark that every opportunity has been presented during the course of this Inquiry for interested individuals and groups to make representations and supply information. While you may feel that there are some aspects of the matter upon which you would have liked to receive more information of

a specific nature, nevertheless, the extent of the record to date does indicate that a large number of people did take the opportunity afforded and came forward with submissions or information in response either to general or specific invitation. The submissions that were made to you cover a considerable range of interests and while all these interests, from manufacturer down to consumer, have one long-term common object, which is the general prosperity of the country, I think it would be a mistake to assume that the short-term interests of all these sections were at all times the same and to approach the problem from such a standpoint. I suggest to you that a practice which may be quite attractive and perfectly legitimate from the standpoint of a particular manufacturer may not necessarily be in the immediate interest of the consumer or in the long-term interest of the whole country; conversely, a practice that may be of immediate benefit to a consumer, may not be to the advantage of the manufacturer or to the permanent advantage of the community. This may sound merely trite, but I do feel that some of the presentations made to you proceeded upon the basis that what is immediately to the advantage of one section is necessarily to

the advantage of all; while I feel the real situation to be that this is not necessarily so, and that one of your problems will be to try, not to reconcile so much as to strike a balance between immediate and long-term advantages and between advantages to different sections of the community.

I believe, in the first place, that certain practices which were described in the course of the hearings are held in the same light by all or practically all of the parties; they are common ground. This common ground would certainly include fraudulent advertising. There may be some differences, around the edges of the subject, as to when advertising ceases to be merely exuberant, if I may apply that term, and becomes downright unfair and misleading; but there is, nevertheless, I suggest to you a hard central core of agreement. The person who advertises one identifiable article when all he has to offer is a different, inferior one, and the person who advertises a "bargain" without the intention of implementing it, would get little shrift I believe from any of the parties who made representations. This is, perhaps, a little different from the strict problem of "loss-leaders" but it is certainly sufficiently associated so that one of the questions, I suggest, that you will wish to ask yourselves

is this: Has the evidence disclosed fraudulent practices of a nature that cannot be dealt with under existing legislation and of an extent that makes it necessary to recommend some curb upon them.

That illustrates, but does not exhaust the area in which I think you will find some common ground. Now, I wish to refer to a matter that is not common ground and that is the definition of a "loss-leader".

THE CHAIRMAN: Are you going to give us one?

MR. MACDONALD: I hasten to assure you that I am not going to offer you one.

However, I venture to suggest that perhaps a little too much emphasis has been placed, from time to time, by all of us on the question of definition. Sometimes it seemed to me that it wasn't so much the difficulty of definition as a question of different people wishing to go different distances over a field which is pretty generally known although it doesn't lend itself to division into airtight compartments. Although no definition of general acceptance emerges from the evidence, and although I would not suggest one, I think, nevertheless, that some effort at delineation of the problem can usefully be made. I suggest that there is a definable area

in which everybody or mostly everybody concerned would say, "Yes, that is a 'loss-leader'" although part of those people would insist upon stopping there, while another part would extend the definition to cases beyond the common area I have in mind.

I would suggest to you that if you took the whole field of sales below what we will for the moment call the "suggested" or "shelf" price and eliminated therefrom what we will for the moment call "distress selling"; and if you then drew a line across the field so as to contain those articles which were so priced as to make no contribution whatsoever to the fixed charges relating to those articles, you would then have an area which most people would agree fell within their definition of "loss-leader".

If you come to the conclusion that there is a considerable area of this nature in which some persons of large resources or who are reckless of their resources are in fact making it difficult for other dealers of moderate resources then I think that you must come to the conclusion that a problem exists. You will then wish to consider whether you should distinguish between the case where there is an intent

to injure and no such intent; you will wish to weigh the disadvantages that attend any proposed remedy against the extent and seriousness of the abuse itself; and you will have to decide between the views of those who hold the "loss-leader" to be a monopolistic and unfair practice and the views of those who consider that any restriction imposed upon free pricing would engender more harm than it would resolve; who believe, for example, that a "loss-leader" is a permissible form of advertising and not to be distinguished from other expenditures on advertising so long as it is not deceptive.

A different task awaits you when you come to enter the next part of the field, the part in which sales do make a direct contribution to fixed charges. Here, the voice of the free pricers, so to speak, becomes more strenuous, for they can argue that any new contribution to fixed charges is a net gain; while the people who would include this area in their definition of "loss-leader" take the stand that this category of "loss-leader", while it may be of some benefit to the person who employs it, creates disproportionate disruption and hardship throughout the distributive field and confers no long-term

benefit on the consuming public.

Some persons would suggest that the last-mentioned field should be divided into two parts. The first part would take in those items in respect of which the price had not been determined upon any principle of maximising profits upon those items themselves, although the effect, like that of advertising might be to maximise profits over the complete inventory. The second part would take in those articles in respect of which the markup did not conform to the "suggested" or "shelf" price but was derived from an attempt to maximise profits on the basis of each individual item. Were such a distinction permitted, then the voice of the free pricer becomes louder still in the second sector; and the views of those who include this sector within their definition of "loss-leader" selling or, at least within the area which they believe a manufacturer should be able to control, urge chiefly that the practice is unfair to the manufacturer who should be in a position to fix his selling policy down to the consumer and safeguard the reputation of his product; and that it is inimical to the survival of the independent retailer; and, also inimical to the long-term interests of the consuming public

since an impairment of the independent retailer may confer monopoly status upon large firms.

It is in this field in particular, I think, that you will be most forcefully met with the consideration that the perfectly legitimate interests of the citizen as a manufacturer or as a distributor may be somewhat different from his legitimate interest as a consumer. It will not be a question of one being right or the other wrong so much as a question of balancing these interests in the light of the long-term public interest itself.

It is also in regard to the second sector particularly that you will have to consider the questions that have been raised as to what developments are taking place in the direction of more economical distribution and what effect any measures you recommend might have upon such developments; you will also have to consider, I suggest, certain peculiar patterns that have already emerged in the sale of certain products like sugar and milk; and in considering the effects of "loss-leader" selling upon the smaller dealer I do not think you can avoid, in order to put the problem in its proper perspective, giving some general considerations to all the

factors that bear upon his ability to compete with larger units.

Now, I should like to approach the representations that have been made to you from a slightly different direction. Some of the arguments addressed to you didn't really deal with the issue of "loss-leader" selling but argued in favour of the principle of resale price maintenance. As far as I can see it, from your terms of reference, resale price maintenance as such is not in issue before you. If you came to the conclusion that a serious problem exists, by reason of "loss-leaders", and you think that it cannot be cured by any legislation directed against "loss-leaders" as such, then I suggest that your function, in the light of your terms of reference, would be so to state and to appraise as well as you could the seriousness of the problem and the reasons why specific counter measures would be inadequate.

Other arguments which were addressed to you also argued in favour of the principle of resale price maintenance but they were somewhat different from those first mentioned in that they first attempted to deal specifically with the problem of "loss-leaders" and arrived at the conclusion that no specific remedy could be devised.

Certain independent merchants who supplied information stated to the effect that they or their associates were being driven out of business by the reduced prices of their competitors. Certain other independent merchants indicated that they were carrying on profitable businesses on the basis of prices considerably below the "suggested" or "shelf" prices of the merchandise which they sold.

Certain manufacturers, as already mentioned, submitted to you that "loss-leader" selling damaged the prestige of their product, discouraged dealers from handling it and caused consumers to delay their purchases. Other witnesses questioned the likelihood of the first happening and suggested that the supplier sometimes contributed to his own difficulties by the size of his suggested margins and his emphasis upon price identification. Obviously then, this raises a question as to the extent to which the abuses complained about are already within the control of some of the parties themselves.

Certain other information before you raises questions as to what extent the problem is aggravated by conditions of a transitional nature and to what extent it is shared by other countries and due to

production in some fields overtaking demand. You will no doubt wish to give at least passing attention to any relationship, at such a time, between prices and employment.

You also received submissions on quite a number of ancillary but nevertheless important points which I could not hope to cover within the time which I propose to take and which is now running out. Merely as an example, it was suggested to you that some product categories, like cigarettes, attached to themselves special considerations and on the subject of cigarettes, I shall add a short word a little later. At least one industry stated that its difficulties in respect of "loss-leader" selling could not be controlled by resale price maintenance, because the dealer was in many cases his own supplier and this industry suggested something in the nature of a Government price-fixing board. Another organization suggested some measure of Government intervention in deciding who should be recognized as having the status of a wholesaler and who a retailer for buying purposes.

Altogether, I believe that about five different types of remedy for dealing with the "loss-leader" problem, as such, were proposed to you.

I might interject that in dealing with these five,

they do not spell out five specific schemes from the evidence. It is merely an attempt to set out prototypes of the different schemes suggested to you. Then:

If you come to the conclusion that there is a problem requiring legislative intervention, and I am not implying that you should or shouldn't, then you will doubtless proceed to examine these proposals with great care. The first that occurs to me involved discussions between the parties opposed in interest, under the auspices of a Government Department, in hopes that such discussions would result in a modification of competitive behaviour which would be considered acceptable and fair by the different parties.

I think I should be remiss if I failed to interpose a note of warning here. There is a very thin line between an agreement not to follow particular prices and practices and an understanding that other prices and practices will be adhered to.

The second type of proposal that occurs to me is one which would, in general effect, permit a dealer to set prices at any level he wished but would compel him to extend that price less a wholesale discount to any competitor who wished to take advantage of it. This, it was stated, would allow such a competitor to put himself

in at least a minimum competitive position. The arguments pro and con that position will still be quite fresh in your minds.

The third type of proposal was that, upon a supplier proving to the satisfaction of this Commission or some other appropriate body that a dealer had been making a practice of selling his articles within a recognized category of "loss-leadering", such supplier might be given authority to cut off further supplies to the dealer.

A fourth type of proposal was for the informal discussion from time to time upon practices considered to be deceptive or otherwise unfair, leaving it, in the beginning at least, to the goodwill of the parties and the strength of public opinion to effect the cure. A fifth type of proposal was for some kind of a minimum mark-up above laid-in cost.

I express no opinion about the advantages or disadvantages of these proposals except to say that they were studied attempts to meet what was considered a serious problem by the people who put them forward, and I have no doubt that they will receive from you the very careful attention they merit.

Finally, I wish to say a word about cigarettes, because it was chiefly in this

field that the relationship of selling prices to buying prices was brought out. You have read the material contained in the Green Book; you have heard representations from various organizations of tobacco dealers; and you have had the advantage of hearing the vice-president in charge of sales of one of the leading tobacco companies. The dealers' organizations, or some of them,"---

definitely some of them, since dealers' organizations include wholesalers---

"---felt that there were certain aspects of the sales policy of the companies which were unfair to them and which would be unlikely to continue if there were a larger number of companies with more variation in their distribution policies. The company representative, on the other hand, gave you the manufacturing view as to why a more flexible policy was not considered desirable. I have no doubt that you will weigh these different views very carefully and should you come to the conclusion that there are unfair aspects about the selling policy in this industry which relate to the position of a limited number of sellers and are beyond the ordinary control of competition, you will no doubt make a

recommendation accordingly and I should be inclined to hope that it would be a case where the situation would resolve itself in the light of your recommendation without any necessity for any other action.

That is all I have to say, Mr. Chairman, except that it would be inappropriate for me to sit down before mentioning the assistance that has been given by Mr. Skeoch, now sitting to my left, in the gathering and compiling of the information which came before you from the Director's office, whether it was in the form of initial information collected, or things in which you yourselves had at some later time expressed an interest.

THE CHAIRMAN: Does either of the counsel for the Inquiry wish to ask any questions of Mr. MacDonald?

MR. WICKWIRE: I have just one question. On page five of your statement, Mr. MacDonald, you refer to Mr. Van Mell of the Sunbeam Corporation, and you mention that you had received some information from the assistant to the Attorney General of the United States, which the Commission already has. If that information differs from the statement of Mr. Van Mell of the Sunbeam Corporation, and since the source of it would not have been available perhaps to Mr. Van Mell, or the Sunbeam Corporation, in

the same way as it was available to you, I am just wondering whether or not it should be made available to the Sunbeam Corporation, in case they wish to produce any further information. Because it strikes me that that is one of the very big points with which this Commission will have to deal.

MR. MACDONALD: Yes, Mr. Wickwire, I would be inclined to think that it should, because it may be that they would wish to come back and submit further facts or further views on the basis of this information.

Since you have raised the point, perhaps I should summarize what was done. We simply wrote to the Department of Justice at Washington and paraphrased some of the information that had been given, and asked them whether they had any information on the same subject. They wrote back and sent three statements.

I should say that the covering communication pointed out that this information supplied by Mr. Van Mell had already been supplied before the Senate Committee considering the District of Columbia bill. And it was at the same Committee meeting that these other statements had been put in.

So, in that sense, Mr. Van Mell had already been familiar with them. Although in the context of another investigation, I still think that it would be proper that attention

be drawn to the fact that those statements are also before this Commission in the course of this Inquiry.

Now, what the statements were, were simply this: The first statement by the Justice Department was a general statement on the policy of the bill, and not particularly related to loss leaders. The other two statements were statements or accounts for discount houses who did take issue with the figures as submitted by Mr. Van Mell, and pointed out various reasons why they thought that they were not representative of the actual situation.

MR. WICKWIRE: In the District of Columbia?

MR. MACDONALD: Yes.

THE CHAIRMAN: The Commission expresses its appreciation of the material which has been submitted this morning by Mr. MacDonald which, we are quite certain, will add a great deal of pertinent data to the material we already have.

With regard to the Sunbeam material, we will examine the correspondence and statements and if it appears to us that it would be fair to ask the Sunbeam people if they desire to make any comments upon it, we will do so.

So far as the rest of the statement made this morning is concerned, I think it is bound to be of particular use to us in helping to orient our thinking toward particular phases

of the problems brought before us during the hearings. That, most certainly, will be a most useful and valuable source of information for us.

I think this brings the public hearings in the loss leader inquiry to a close-- that is, barring some unforeseen circumstances which might make it necessary for later hearings to be held. It is our desire that the hearings should be regarded as terminated at this time, if possible, so that we can proceed with our task--which is the consideration of the mass of material now before us, and the preparation and completion of our report to the Minister, as required by law. We think we have a large enough task on our hands without seeking further delays, through the presentation of other briefs in further public hearings.

I think that completes all I have to say, but before the adjournment I believe I should add that we would wish to say, in addition to what was said by Mr. MacDonald concerning the very valuable assistance he received from Mr. Skeoch, that we in the Commission during the course of these hearings have been very ably assisted from two sources, in addition to the work done by Mr. MacDonald and Mr. Skeoch in his branch. We have been assisted by the very competent work done by

our two counsel, Mr. Wickwire and Mr. Gerin-Lajoie, who have devoted themselves with a great deal of attention and skill to the examination of briefs, and to the examination of witnesses presenting briefs, much to the advantage of the Inquiry.

Then, we have been very materially assisted by Mr. Davidson, as Secretary, who on some occasions has had a very complex job of arranging for the delegations to appear at times which were feasible to them and acceptable to us. Then, in addition, Mr. Davidson has done a great deal of work in connection with the actual evidence itself, which I am sure will be of great use to us in our work on the report.

I think that completes all we have to say at this time.

---Adjournment.

C O P Y

Department of Justice
Washington

September 14, 1954.

Mr. T. D. MacDonald
Director of Investigation and Research
Combines Investigation Act
Department of Justice
Ottawa, Canada.

Dear Mr. MacDonald:

This will acknowledge receipt of your letter of August 24, 1954 addressed to Mr. Hollabaugh, relative to a statement made by Mr. Herman T. VanMell, Director and Secretary of the Sunbeam Corporation.

Apparently the statement made by Mr. VanMell before the Commission is similar to the statement which he made before the Senate Committee considering S-3297, a Fair Trade Law for the District of Columbia. The Department of Justice opposed this bill. A copy of my statement on the matter is attached.

We have not undertaken to secure facts or prepare arguments relating to the statement made by Mr. VanMell. Mr. Albert White, a private attorney representing Dalmo Sales Company, a discount house here, made two statements, copies of which are attached, directed in large part to answering Mr. VanMell. Perhaps these statements will contain information of interest to you. Since we were informed by the Senate Committee that the hearings were not being printed, it was necessary to secure copies of

Mr. White's statements from him. He was away on vacation when your letter arrived, which accounts for our delay in replying.

I regret that we cannot be of more help to you in this matter. Should there be other matters in which we might assist you, please do not hesitate to call upon us.

Sincerely yours,

STANLEY N. BARNES
Assistant Attorney General.

STATEMENT OF ALBERT WHITE
COUNSEL OF DALMO SALES COMPANY
IN OPPOSITION TO S. 3297, A FAIR
TRADE LAW FOR THE DISTRICT
OF COLUMBIA

This statement is being submitted on behalf of the Dalmo Sales Company, A Discount House in the City of Washington, to answer the supplemental statement submitted by Mr. Herman Van Mell, Counsel of Sunbeam Corporation. At the outset I would like to emphasize that I am answering what I consider to be the most flagrant misrepresentations and falsehoods contained in that statement. I want to point out that I have previously refuted much of what Mr. Van Mell has stated and to stress that my failure to comment on all allegations at this time does not imply acquiescence with his other views.

The Sunbeam representative was very concerned with the 11% drop in business in 1953 in the District while its nation wide sales rose 15%. As I previously testified (at the second hearing) there are many plausible explanations for the drop in sales which he disregards:

1. Baltimore shipments from Baltimore distributors were not included in his figures;
2. Sunbeam distributors were frequently out of stock during the Christmas season of 1953,

the biggest selling season of the year;

3. The scarcity of Sunbeam caused a great deal of trans-shipping from other parts of the country.

Therefore, the Sunbeam sales at the retail level in the District cannot be reflected by the sale of Sunbeam products from the manufacturer to the distributor.

Now the Sunbeam representative is lamenting the fact that the overall drop in business in the District of Columbia in the first six months of 1954 is greater than its drop in business nationwide. In the first place, he suggests that payrolls in the District of Columbia were reasonably constant (page 2 of the Supplemental Statement). Those familiar with the Washington scene know that in the latter part of 1953 and the early part of 1954 (and this is an additional reason for their possible drop in volume last year) the reduction in force from various government agencies not only dropped District payrolls but also created temporarily a certain amount of insecurity, and hence, a curbing of spending. Mr. Van Mell failed to mention that from the latter part of December 1953 to the early part of February 1954 there were no Sunbeam shipments to the District from the factory. Distributors and dealers were out of stock. Unless shipments were received from out-of-town distributors, dealers had no Sunbeam

to sell. The very figures used on shipments of the Sunbeam frying pan (which I will discuss in detail later) verify discriminatory shipments to the District. While Sunbeam shipments were not shipped into the District during this period. Sunbeam was making shipments throughout the country.

It is interesting to note that of the national electrical manufacturers Sunbeam is the only one who is claiming loss of business here. What they "claim" is true of the local market is not even suggested by other electrical appliance manufacturers. Their presence here indicates that they "may" have suffered a greater loss in sales than other manufacturers. It should be stated further that Sunbeam's hostility toward Discount Houses, whom they claim do a large percentage of the business, has probably caused the Discount Houses not to stock the less popular Sunbeam products such as the egg cooker, baby bottle warmer, iron and steam iron.

On page 306, line 6, of the transcript, Mr. Van Mell states, "If letting the price take its own natural course, as has been suggested, would increase our units sold or even sell the same number, we would not be concerned or be here." Only when Sunbeam ships to local distributors on a free and impartial basis can Sunbeam determine whether or not Sunbeam sales

at the retail level will coincide with their sales nation wide.

While I have stated this before, I feel it important to reiterate that Sunbeam sales at the retail level have probably been as high if not higher than anywhere in the country (specially when Sunbeam products are available to the dealers).

I would like to discuss in some detail the Sunbeam frying pan, not necessarily because I believe that in and of itself it is such an important factor, but because Mr. Van Mell stressed it and dwelled on it so long. On page 306, line 11, of the transcript he states, "Discount Houses do not take up and give a play to a brand new unit. They wait until the market has been established for it ..." As far as the District of Columbia is concerned, this simply is not true. Discount Houses purchased the Sunbeam frying pan as soon as it was available to them.

As far as promotion is concerned, Discount Houses do not run advertisements on Sunbeam products because Sunbeam is unwilling to contribute to advertisements where the resale price is less than their recommendation and Dalmo Sales has been willing and is willing to participate on a cooperative basis with Sunbeam.

On page 9 of the Supplemental Statement the figures indicate that the shipments to the District of Sunbeam frying pans were far below those shipped to comparable cities, and retail sales in the District were below those of the other cities. The facts concerning the frying pan in the Sunbeam area are these. In the early part of the year (I believe in February) Washington distributors placed with the local Sunbeam representative orders for the Sunbeam frying pan. During the first six months of the year, according to four out of five local distributors (the fifth was not available for comment) Sunbeam never filled those initial orders in full. From the time of the first shipment distributors were out of stock far more often than they had stock on hand. During that period dealers were out of Sunbeam frying pans far more often than they had it on hand. Therefore, the reason so relatively few frying pans were sold in this area during that time is because Sunbeam elected to sell less. Had they wanted to sell more, they could have sold more. It is interesting to note that using the figures of Sunbeam that percentage wise based on the number of units shipped more frying pans were sold in the District than in any of the other cities.

In conclusion, as I pointed out in my statement before the Committee during the second

hearing, Discount Houses are a fait accompli not only in Washington but all over the country and reflect a definite trend in merchandising. The possible investigation by the National Retail Furniture Association to learn if it should cease supporting fair trade laws is indicative of this trend. I should like to have included in the transcript at this point a newspaper clipping from the Retailing Daily of July 15, 1954.

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COPY

My name is Albert White, and I am here to represent the Dalmo Sales Co., a discount house in the District of Columbia.

At the outset, I would like to state that many of the remarks made last week in connection with the practices of discount houses in the District of Columbia are incongruous with the facts. I now charge that many who spoke evidenced such a disregard for the truth that they at best were guilty of gross negligence. There was a lot of "name calling" at that hearing. I believe that the best way to rebut the "name calling" and the other charges made at that hearing is to define and explain the epithets used and then see whether in practice they apply to discount houses. It is our contention that except for the fact that their prices are lower, discount houses differ in no way from other retail establishments. They stock and display merchandise, have a large investment in their business and are here to stay.

First, I would like to discuss the term loss-leader. Loss leaders as applied, for example, to a grocery store describes its practice of selling certain items within a cent or two of their cost, sometimes below their actual cost. They do this because

their experience is that sufficient customers will buy other items at regular prices to balance out their losses. But the charge is not true, as made by Mr. Sundlin, that it is necessary for a discount house or that it is the practice of a discount house to balance a cut price with a higher than usual price on other merchandise. EVERY ITEM SOLD IN A DISCOUNT HOUSE IS SOLD AT A DISCOUNT AND AT A PROFIT, TO THE DEALER. Every item within a category, such as mixers, toasters, irons, is sold at approximately the same percentage of discount. What variation there may be is due to the variation in cost to the dealer. How then does the charge stand that advertised items by the discount houses serve as loss-leaders. Clearly this is not the case.

Along with this same argument the same speaker claimed that there was price juggling whereby inferior goods are sold at high prices. He was vague as to how they accomplished this.

I would like at the conclusion of my talk to place in the record the advertisements that I have before me. These advertisements indicate that Schick, Sunbeam and Remington-Rand shavers are all advertised at approximately the same discount. When the customer enters the store what other shaver is the discount house salesman going to switch him

to in order to get the alleged high price for inferior goods. None, because they handle no other brand of shavers! And if they did, is it the contention of the proponents of this bill that the consumer is so naive that he would pay a higher or unreasonable price for X brand of shaver which he did not come to buy, rather than purchase one of the brands better known to him at a lower price? Take the mixer category, the coffeemaker category, any category. It's the same story with almost all of the items that they carry. Discount houses can't take the time and effort to sell off-brand merchandise. Discount houses aren't interested in handling an item unless it has a rapid turn-over. Dalmo, for example, doesn't carry any off-brand merchandise.

The speaker spoke of monopoly... since Dalmo first situated itself on 11th Street, two competitors have gone into the same business on the same block. Still another is a block away, and several new discount houses have opened up in their general area. Does this sound like a monopoly?

The Better Business Bureau was heard from shortly thereafter, and it listed some grievances against discount houses. The charge was made that they misrepresented the prices. Where is the misrepresentation? The store advertises merchandise naming the

recommended resale price and beside it a discount price. When the consumer comes to buy the item, he can do so. There is no misrepresentation of any kind.

"Bait advertising" was another accusation against discount houses made by the BBB. Bait advertising, basically, is the advertising of an item at a very low price. When the customer seeks to purchase the item he finds that either the dealer is out of stock or the dealer so discredits the item advertised that the consumer won't want to buy it. The salesman then tries to sell him something else. In the first place, discount houses don't engage in bait advertising. As I explained before, they don't try to switch the customer to something else, their mark-up is about the same on every item within a category so that it is immaterial to the discount house operator which particular item is selected by the customer. Furthermore, they not only don't engage in this practice, but they help prevent this practice. Popular items are sold at such a low price that other dealers can't lure the consumer with lower priced baited items.

There is nothing in the proposed Fair Trade law that even attempts to correct or remove "bait advertising". That brings me to a point that I would like to especially emphasize to the committee: THERE IS NOTHING IN THE PROPOSED FAIR TRADE LAW THAT IS DESIGNED TO CORRECT THE

EVILS WHICH MAY BE PRACTICED BY A SMALL NUMBER OF DEALERS AS REGARDS UNETHICAL TRADE PRACTICES OR MISLEADING ADVERTISING.

The BBB also claimed that there was no adjustment on defective merchandise sold by discount houses. Now I feel certain that they know that Lepperts, Edgar Morris, GE Supply Co., Carl Daubers, and the Schick and Remington-Rand repair stations are the authorized repair stations for almost 100% of the Fair Trade items handled by the discount houses in the District of Columbia. These are the same authorized repair shops regardless of what store or type store the item of merchandise is purchased. There is a one year manufacturers' warranty to repair or replace any defective part. Since the customer has one year free service at no charge, what is the basis for the complaint by the BBB?

As recently as about a week ago, a representative of the BBB came to Dalmo Sales Co. and asked for and received their cooperation in checking the credibility of the advertising of another local merchant. If they sincerely believe discount houses to be so evil, would they have relied on them for information?

One of the speakers suggested that government control at the retail level and the having of but one brand per category would be the result of no Fair Trade. From 1890 until the thirties there were no Fair Trade laws,

but surely there was competition in appliances then just as there is now. Food items aren't Fair Traded to any extent, but there are certainly many competitive brands and no government control.

The Sunbeam representative expressed a great deal of alarm at the fact that there was a substantial drop in the amount of business done by Sunbeam in the District, while its overall business in the rest of the country increased in 1953. I don't question his facts, but I do question his omission of several pertinent facts. The figures that he gave represented the sales from the Sunbeam factory to the Washington distributors solely.

In the first place, Baltimore shipments by Baltimore distributors into this area were heavy in 1953. This would not be reflected in the figures given.

Secondly, in the fall of last year when the vast bulk of appliances are stocked and sold for the Christmas business, Sunbeam distributors were frequently out of stock, because Sunbeam wasn't shipping into this area all of the merchandise that the distributors and dealers needed. If they had shipped more as they could have, they would have sold more. They ELECTED to sell less!

Furthermore, as a result of this policy on the part of Sunbeam, dealers and distributors had Sunbeam merchandise shipped in from various

out of town sources. Therefore, at the retail sales level, the picture is in no way the same as at the manufacturer's level. In the light of all of the facts, the conclusion that discount houses caused Sunbeam to lose sales in Washington cannot be drawn.

One or two of those who spoke mentioned a basement store that adds \$1.00 to every item that it sells and has the customer pick out the merchandise that has been dumped there. I question this. The firm that I now represent has been in business many years; it knows of no competitor that so operates. Is it their contention that an item costing \$2.00 would be sold for \$3.00 and that an item costing that dealer \$100.00 would be sold by him for \$101.00? I would be curious in knowing who the dealer is, and I feel that the committee should inquire as to who it may be. As I stated before, discount houses are not too unlike other dealers -- they have large displays of merchandise, they have large investments in their businesses.

Not only is Fair Trade ineffective against the ills that it charges discount houses with employing such as those that I have described, but it isn't even effective in maintaining Fair Trade prices. According to Retailing Daily, a trade journal, Fair Trade is ineffective in the United States. More and more discount houses are coming into being all of the time --

even in the 45 states that have Fair Trade laws. New York has several hundred discount houses. They are a fait accompli; it reflects a definite trend in merchandising in this country - it is in no way a fly by night operation. With the exception of a few manufacturers, enforcement is lax even by those who go to the trouble to fair trade their items. Indeed, Landers, Frary and Clark, manufacturers of Universal products, have removed their appliances from Fair Trade in the state of New York because they admitted that they couldn't enforce it.

* * *

I have been attempting in my remarks to answer false charges against discount houses. This has not permitted me, except incidentally, to discuss the advantages to the consumer of making purchases at a discount. Those who spoke for the bill, the Better Business Bureau, Doeskin, Sunbeam, the Board of Trade, and others I don't now recall, constitute a small minority of the population who are directly concerned or represent those dealers and manufacturers who are directly concerned with the enactment of the proposal. Admittedly, I represent a dealer who along with others like him represent a small minority of the population who are anxious to have the proposed bill defeated. The Federal Trade Commission, The Justice Department, and

The District Commissioners who because of their position can be assumed to be free of personal bias and objective on the matter all oppose the bill. However, the most important group to be heard from is a group who is not engaged in business or affiliated with a business association and not concerned from that point of view. That is the group of consumers who deal with discount houses.

Ask the groups who represent the housewife -- Mrs. John Doe -- ask her if she sees a wide display of merchandise on hand at discount houses. Ask her if she gets the benefit of the manufacturer's warranty when she buys at a discount house; ask her if the savings she receives enables her to buy more merchandise than she otherwise could -- spreads her dollar farther. Ask her if the advertisements are false or misleading -- or does she get what is advertised at the price advertised? And finally ask her if she would like to start paying a lot more money for the items she buys. The growing success of discount houses testifies to their fair dealing.

Representatives of the House, Senators, Supreme Court justices, high government officials deal repeatedly with discount houses. Would they do so if the charges that this committee has heard were true?

Statement of Stanley N. Barnes
Department of Justice
before the Senate District Committee
on
S. 3297,
"Fair Trade Act of the District of Columbia"
July 13, 1954

I am glad to appear before this Committee in response to its request to present the views of the Department of Justice with respect to S. 3297, a bill to provide so-called "fair trade" for the District of Columbia.

As was made clear in our report of June 3, 1954 to the Chairman, the Department is opposed to the enactment of this bill. Under so-called "fair trade," a contract between a manufacturer and a single retailer fixes the price of a commodity for all other retailers within a state. Price competition among retailers is thus largely eliminated. Without competitive pricing, the form of competition may remain, but the substance is lost. That is why price-fixing has long been unlawful per se.

The legislation presently under consideration goes far beyond the earlier enabling statutes and would place Congress on record as affirmatively favoring insulation of certain segments of the business community from the rigors of competition. The Miller-Tydings Act exempted from the anti-trust laws and the Federal Trade Commission Act vertical minimum price-fixing contracts (1) which

involve trade-marked or branded commodities, (2) which are in competition with other similar commodities, and (3) when such contracts are valid under the state law of the place of resale. The McGuire Act, following the Schwegmann decision, permitted the binding of persons not parties to the contracts. Both Acts, however, were described as merely enabling legislation, which "does not commit the Congress to a national policy..."^{1/} The House Commerce Committee's report on what became the McGuire Act stated that the bill "would permit the several States to experiment further with fair-trade legislation."^{2/} The sponsor of the bill, Mr. McGuire, stated on the floor of the House:

This bill is merely an enabling measure. . . . All we are doing is to make it possible for States which believe in the principles of price maintenance to enact appropriate legislation.^{3/}

It is apparent that Congress did not intend at that time to do more than permit the states to effectuate their own policies.

The suggestion has been made that this resale price maintenance system permits

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- ^{1/} S. Rept. 2053, 74th Cong., 2d Sess. See also H. Rept. 382, 75th Cong., 1st Sess.
 - ^{2/} H. Rept. 1437, 82d Cong., 2d Sess., p.5.
 - ^{3/} 1951 Cong. Rec., p. 13671.

competition at the manufacturing level "where it belongs," the implication being that retailers should be insulated from competition. Experience has richly demonstrated, however, that competition at all levels of our economy is in the national interest. Competition has kept our free enterprise system strong and viable. Its suppression by either governmental regulation or private agreement is inconsistent with basic American principle.

How does suppression of competition result from so-called "fair trade"? It is obvious that price competition on "fair-traded" items is eliminated among retailers. What is perhaps less obvious is the fact that competition at other stages of distribution is also impaired. While the so-called "fair trade" laws ostensibly prohibit horizontal agreements, the same result is achieved on the manufacturing or distributing level when competing manufacturers or distributors sign similar "fair trade" contracts. Parallel vertical contracts make superfluous horizontal agreements not to compete.

While great emphasis is placed on protection of the manufacturer's "good will," the fact remains that the great impetus behind so-called "fair trade" comes from retailing groups, not from manufacturers. "fair trading" has, in fact, been most effective in those fields in which trade associations are strong enough to "persuade" manufacturers to "fair trade." The Department of

Justice has in the past brought criminal cases against a number of trade associations for activities going beyond those contemplated by the Miller-Tydings exemption to the Sherman Act. Defendants in these cases were charged with conspiracies to raise, fix and maintain prices and with persuading producers to enter into agreements to fix prices at a level to give retailers a desired margin of profit. Methods of persuasion included boycotting noncooperating manufacturers. Pleas of nolo contendere were entered in each case and fines were assessed against the defendants.

Under so-called "fair trade," price-fixing arrangements are entered into by private parties without public regulation or supervision. The public interest is not represented at any stage of the negotiations. The result, of course, is higher prices for the consumer. While "fair trade" proponents refer to statistical studies purporting to show that prices are lower under "fair trade," it is suggested that the use made of these studies is of questionable validity. For instance, a witness before this Committee has implied that a study showing this result will be based on the Consumer Price Index of the Bureau of Labor Statistics. It should be pointed out, however, that the Consumer Price Index gives by far the largest weight (approximately 71%) to items which are not

"fair traded." Frequent reference is also made to surveys by A. C. Nielson, but the report of the survey itself, so far as we can determine, has never been made available.

So far as we know, a complete survey of "fair trade" and non "fair trade" prices has not been made. It may be noted, however, that at the time of the hearings on the McGuire Act in 1952, price comparisons placed in the record showed that the consumer paid higher prices in so-called "fair trade" states than in non "fair trade" areas. A comparison of prices of drug store items in April-June, 1954, obtained from the advertisements of drug stores in the District of Columbia, showed that on 736 items of ordinary drug store business the "fair trade" price totalled \$2,241.10 and the non "fair trade" price on the same items totalled \$1,602.44, or a saving of 28.4%. In the appliance field, a similar comparison of so-called "fair trade" prices and the prices of a low mark-up outlet in the District on 245 items showed a total of \$6,142.33 under "fair trade" and \$4,442.69 for the same items under the latter's prices, or a saving to the consumer of 27.7%.

The retailers selling at the lower price are not using these items as loss leaders; even at the lower price they are taking their mark-up and making a profit. For instance, a certain

mixer costing retailers \$29.70 in 1952 was "fair traded" at \$46.50, while non "fair trade" retailers sold it for \$34.79. Certain razor blades have a gross margin of about 58% as compared with a non "fair trade" margin of about 26%. A certain vacuum cleaner shows a gross margin of 93.4% as compared with 29% for non "fair trade" areas. The list could be extended, but it is evident that there is a considerable area for price competition below so-called "fair trade" prices and above retailer cost prices.

It is evident that "fair trade" does not benefit the consumer. At the same time it deprives a businessman of his right to decide whether he shall compete by lower prices and less service or by higher prices and more elaborate service. By fixing the price high enough to profit the less efficient, it takes away the incentive of the more enterprising businessman to increase his efficiency.

It has been noted that among the proponents of so-called "fair trade" for the District of Columbia are representatives of national organizations. Obviously, so long as the District of Columbia is outside the "fair trade" orbit, it affords consumers a basis for price comparison and makes it a little more difficult to increase mark-ups under "fair trade," so it is not surprising that business groups outside of the District are anxious to eliminate this basis for comparison.

In closing, I would like to reiterate the views expressed in the Department's report of June 3, 1954, concerning S. 3297:

Enactment of this bill would give immunity from the antitrust laws to a segment of the business community. It would further place the Congress on record as favoring elimination of price competition among retailers, with (1) resultant higher prices to consumers; (2) the throttling of initiative of retailers, who would be deprived of the choice of whether to take a small mark-up and make their profits in volume sales and low overhead rather than in higher mark-ups on fewer sales; (3) advantages to the chains and other large outlets, which can market their private brands below the prices fixed on the fair traded goods of their smaller competitors; and (4) opportunities for boycotting and other coercive tactics to insure cooperation.

Because this legislation is (1) inconsistent with the basic philosophy of the antitrust laws, (2) is susceptible of use as a cloak to hide general price-fixing activities, and (3) impairs competition at all levels of production and distribution, the Department of Justice is opposed to its enactment.

Copy

Room 746,
Justice Building,
August 24, 1954

Mr. Marcus A. Hollabaugh,
Anti-Trust Division,
Department of Justice,
Washington, D.C.

Dear Mr. Hollabaugh:

In the public hearings before the Restrictive Trade Practices Commission on "loss-leader" selling one of the organizations that made a submission was the Sunbeam Corporation whose spokesman was Mr. Herman T. Van Mell, Director and Secretary of the Company.

Among a number of points made by Mr. Van Mell was one dealing with the volume of sales made by Sunbeam distributors in the District of Columbia. According to Mr. Van Mell, Sunbeam appliances had formerly been carried by about 650 stores in the District and as a result of price cutting, many of these stores had dropped the Sunbeam line and in 1954 90 per cent. of the Sunbeam business was done by 20 discount houses. The result, he claimed, was a substantial decline in their sales: in 1952 sales to distributors in the District of Columbia were \$613,000, whilst in 1953 they had dropped to \$545,000. At the same time throughout the United States, Sunbeam sales had shown an increase in 1953 of 15 per cent.

I was wondering if the Anti-Trust Division, in the course of its work on the Sunbeam case, had undertaken any inquiry into this question of the volume of sales in areas where price reductions were common. For example, would sales to distributors in the District of Columbia necessarily show the same pattern as retail sales? The point that I have in mind is whether discount houses in the District of Columbia might not make some of their purchases from distributors with which they had established contacts outside of the District of Columbia. If this were the case, then sales to distributors in the District of Columbia might reflect what was happening to the sales of the "regular" outlets for Sunbeam appliances whereas at least part of discount-house sales would come from purchases made through sources other than the regular distributors in the District of Columbia. I understand, furthermore, that some discount houses have established outlets in the District of Columbia with the specific purpose of operating a mail order business to nearby "fair-trade" states, which would also appear to increase the volume of sales of Sunbeam appliances in this centre.

I would appreciate very much any information that you may be able to give me, so that I may make it available to the Restrictive Trade Practices Commission, either on this

specific point or on the more general question of the effect of price cutting upon the volume of sales not only of Sunbeam appliances but of any other branded consumer goods.

Yours very truly,

(Sgd.) T. D. MacDonald

T. D. MacDonald
Director

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(APPENDIX "B" FOLLOWS)

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APPENDIX *B*

TABLES SUBMITTED BY DIRECTOR OF INVESTIGATION AND

RESEARCH ON SEPTEMBER 18, 1954

8

THE
JOURNAL
OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
OF GREAT BRITAIN AND IRELAND
VOLUME 18. PART 1. 1888.

(1)
Table 1

Failure Rate Per 10,000 Firms in Canada

Year	Failure Rate Per 10,000	Year	Failure Rate Per 10,000
1900	140	1927	125
1901	145	1928	120
1902	116	1929	128
1903	101	1930	152
1904	125	1931	143
1905	132	1932	161
1906	113	1933	138
1907	116	1934	90
1908	145	1935	78
1909	123	1936	71
1910	104	1937	55
1911	104	1938	58
1912	99	1939	72
1913	119	1940	64
1914	194	1941	49
1915	110	1942	36
1916	114	1943	11
1917	77	1944	6
1918	62	1945	6
1919	54	1946	7
1920	73	1947	15
1921	159	1948	23
1922	228	1949	27
1923	195	1950	32
1924	148	1951	36
1925	141	1952	37
1926	128	1953	44

Source: Man's Statistical Review

COMMERCIAL FAILURES BY INDUSTRY AND CLASS

CANADA AND UNITED STATES, 1939, 1949-53

Source: 1. Dun & Bradstreet figures published in Financial Post2. Dun's Review

		<u>1939</u>		<u>1949</u>		<u>1950</u>		<u>1951</u>		<u>1952</u>		<u>1953</u>	
		Canada	U.S.	Canada	U.S.	Canada	U.S.	Canada	U.S.	Canada	U.S.	Canada	U.S.
1. Manufacturing	(No.)	234	2,919	177	2,331	159	2,074	174	1,533	205	1,581	185	1,857
(Liabilities)	\$ 000	3,829	71,152	8,406	143,265	6,479	95,094	6,409	90,970	7,787	104,954	8,943	158,854
2. Wholesale Trade	(No.)	77	1,534	69	1,110	70	1,016	72	827	73	748	85	933
(Liabilities)	\$ 000	1,293	23,942	3,516	43,163	1,746	33,594	2,892	41,572	2,285	40,896	3,605	52,199
3. Retail Trade	(No.)	874	9,050	247	4,246	349	4,429	387	4,088	418	3,833	568	4,381
(Liabilities)	\$ 000	4,946	67,378	3,252	71,273	4,347	72,691	5,693	72,936	6,883	75,547	11,779	117,299
Foods	(No.)			60	906	94	941	98	1,063	102	919	117	888
Farm Supplies, Gen'l Stores	(No.)			16		17		17		16		30	
General Merchandise	(No.)			17	171	18	203	17	139	23	135	25	149
Apparel	(No.)			45	590	60	735	54	600	60	570	78	597
Furniture, H'sehold Furnishing	(No.)			24	483	20	462	39	408	36	428	64	711
Lumber, Bldg. Mtls. Hardware	(No.)			9	281	16	260	27	233	24	187	35	221

COMMERCIAL FAILURES BY INDUSTRY AND CLASS

CANADA AND UNITED STATES, 1939, 1949-53

	1939		1949		1950		1951		1952		1953		
	Canada	U. S.	Canada	U. S.	Canada	U. S.	Canada	U. S.	Canada	U. S.	Canada	U. S.	
Automotive Products	(No.)		35	456	38	437	40	310	58	302	85	520	
Restaurants	(No.)		20	792	48	831	53	864	55	828	71	793	
Drugs	(No.)		1	116	5	116	3	108	8	107	7	123	
All Other	(No.)		20	451	33	439	39	363	36	357	56	379	
4. Construction	(No.)	53	63	838	89	912	116	957	106	838	142	1,024	
(Liabilities)	\$ 000	793	1,329	27,245	1,415	25,651	2,560	37,473	2,196	36,145	4,477	43,327	
5. Commercial Service	(No.)	61	40	721	50	731	48	200	41	611	59	667	
(Liabilities)	\$ 000	774	776	23,163	1,405	21,253	1,494	8,216	670	25,772	1,500	22,474	
Total	(No.)	1,299	14,768	596	9,246	717	9,162	797	8,058	843	7,611	1,039	8,862
(Total Liabilities)	\$ 000	11,635	182,520	17,279	308,109	15,392	248,283	19,048	259,547	19,823	283,314	30,304	394,153

(111)

Table 3

COMMERCIAL FAILURES BY INDUSTRY AND CLASSCANADA, 1st and 2nd quarters 1953 and 1954Source: Dun's Statistical Review, August 1954

		<u>1 9 5 3</u>		<u>1 9 5 4</u>	
		1st Qtr.	2nd Qtr.	1st Qtr.	2nd Qtr.
1. Manufacturing	(No.)	38	48	76	76
	\$				
(Liabilities)	000	1,374	2,888	7,475	7,652
2. Wholesale Trade	(No.)	25	22	44	34
	\$				
(Liabilities)	000	510	1,068	1,381	1,155
3. Retail Trade	(No.)	136	123	214	166
	\$				
(Liabilities)	000	2,534	2,792	5,252	3,026
Foods	(No.)	31	25	32	38
Farm Supplies					
Gen'l Stores	(No.)	08	05	06	08
Gen'l Merchandise	(No.)	07	05	12	08
Apparel	(No.)	25	20	44	28
Furniture, H'sehold					
Furnishings	(No.)	06	16	32	29
Lumber, Bldg. Mtls.					
Hardware	(No.)	11	06	09	06
Automotive					
Products	(No.)	20	19	31	18
Restaurants	(No.)	14	11	28	14
Drugs	(No.)	02	01	02	03
All Other	(No.)	12	15	18	14
4. Constructions	(No.)	33	32	43	46
	\$				
(Liabilities)	000	943	748	2,394	2,740
5. Commercial Service	(No.)	10	14	30	22
	\$				
	000	193	277	463	721
6. Total	(No.)	242	239	407	344
	\$				
(Total Liabilities)	000	5,554	7,773	17,465	15,294

Table 4

COMMERCIAL FAILURES BY INDUSTRY AND CLASSUNITED STATES, 1st and 2nd quarters 1953 and 1954

		<u>1 9 5 3</u>		<u>1 9 5 4</u>	
		1st Qtr.	2nd Qtr.	1st Qtr.	2nd Qtr.
1. Mining and Manufacturing	(No.)	416	428	597	608
	\$				
(Liabilities)	000	29,772	35,745	52,255	54,643
2. Wholesale Trade	(No.)	218	229	289	262
	\$				
(Liabilities)	000	11,267	12,554	12,893	13,951
3. Retail Trade	(No.)	1,043	1,107	1,450	1,450
	\$				
(Liabilities)	000	27,571	27,870	46,436	35,491
Food & Liquor	(No.)	206	237	257	255
Gen'l Merchandise	(No.)	39	38	53	43
Apparel & Accessories	(No.)	167	152	229	230
Furniture & Home Furnishings	(No.)	164	166	264	255
Lumber, Bldg. Mtls., Hardware	(No.)	52	56	72	94
Automotive Group	(No.)	99	141	172	129
Eating & Drinking Places	(No.)	184	188	227	262
Drug Stores	(No.)	31	28	39	47
Miscellaneous Retail Trade	(No.)	101	101	137	135
4. Construction	(No.)	249	255	338	335
	\$				
(Liabilities)	000	9,619	9,459	14,503	11,880
5. Commercial Service	(No.)	151	188	221	222
	\$				
(Liabilities)	000	3,435	7,060	10,981	6,654
6. Total	(No.)	2,077	2,207	2,895	2,883
	\$				
(Total Liabilities)	000	81,664	92,688	134,646	112,619

Source: Dun's Statistical Review, August 1954

Table 5

COMMERCIAL FAILURES IN CANADA
FOR THE 1ST AND 2ND QUARTERS 1954, WITH COMPARISONS

	<u>Totals for 1st and 2nd Quarters</u>					
	<u>1 9 5 4</u>		<u>1 9 5 3</u>		<u>1 9 5 2</u>	
	<u>1st. Qtr.</u>	<u>2nd Qtr.</u>	<u>1st Qtr.</u>	<u>2nd Qtr.</u>	<u>1st Qtr.</u>	<u>2nd Qtr.</u>
<u>TRADE</u>						
General Stores	29	26	16	9	14	15
Grocery	27	22	18	11	18	15
Confectionery	13	14	8	2	9	7
Drink and Tobacco	7	5	6	1	6	7
Fish and Meat	19	15	10	11	11	10
Boots and Shoes	8	7	3	3	7	7
Dry Goods	16	12	9	3	8	7
Clothing	36	25	14	23	19	16
Furniture	13	11	8	12	6	7
Books and Stationery	9	9	2	4	5	6
Automobile	17	13	6	4	13	2
Hardware	7	6	2	5	7	4
Electric Apparatus	23	13	3	10	14	8
Jewelry	11	5	8	12	8	11
Coal and Wood	11	6	2	3	8	1
Drugs and Chemicals	9	6	5	5	10	1
Miscellaneous	44	36	26	23	23	28
Total Trade	299	231	146	141	186	152
Total Manufactures	127	99	85	73	91	83
Total Service	110	99	60	65	86	64
Total Other	144	101	91	72	107	95
GRAND TOTAL	680	530	382	351	470	394

Source: Dominion Bureau of Statistics

Table 6

D.B.S. Yearly Totals of Commercial Failures under the
Provisions of the Bankruptcy and Winding Up Acts
1950, 1951, 1952 and 1953

	<u>1950</u>	<u>1951</u>	<u>1952</u>	<u>1953</u>
Trades (Total)	502*	570*	569*	650
General Stores	45	56	53	62
Grocery	60	65	56	61
Confectionery	30	27	28	21
Drink and Tobacco	4	10	20	12
Fish and Meat	44	44	38	43
Boots and Shoes	19	16	22	17
Dry Goods	32	24	27	32
Clothing	67	75	66	86
Furniture	17	28	24	30
Books and Stationery	15	20	17	17
Automobile	11	16	26	30
Hardware	11	23	17	20
Electric Apparatus	15	27	31	50
Jewellery	19	27	24	36
Coal and Wood	17	21	15	15
Drugs and Chemicals	14	8	14	21
Miscellaneous	82	83	91	97
Manufactures	257	269	305	359
Service	273	255	279	286
Other	193			302
Not classified	77	305	356	
 Total	 1,302	 1,399	 1,509	 1,657

* Figures in these columns are amended figures issued in following year.

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY
JAMES CLAYTON

LONDON

Printed by J. Sturges, at the 'Black Swan' in St. Dunstons Church-yard, near St. Dunstons Church, in the City of London.

Table 7

Monthly Indexes of Output of Consumers' Durable Goods, Canada and United States, Jan. 1950 to March 1954
 Canadian figures based on 1947 Average-100 (without seasonal adjustment)
 United States figures based on 1947-49 Average-100 (without seasonal adjustment)

	Motor Vehicles		Radios & Radio Parts		Furniture		Refrig's, Vacuum Cleaners and Appliances		Total Consumers' Durables	
	Canada	U.S.	Canada	U.S.	Canada	U.S.	Canada	U.S.	Canada	U.S.
1950										
Jan.	136.6	141	111.2	187	128.9	111	113.4	136	134.0	112
Feb.	145.8	119	114.8	209	104.3	117	125.9	147	135.8	111
Mar.	149.3	127	109.1	230	108.9	119	159.4	158	147.0	118
Apr.	134.3	142	112.2	234	99.7	118	157.1	174	131.8	125
May	171.4	158	104.3	216	111.2	118	190.1	159	137.9	128
June	201.3	203	96.7	189	115.6	120	185.1	173	181.2	144
July	205.3	178	99.9	140	87.1	116	172.2	161	169.5	131
Aug.	130.6	185	112.8	307	111.7	129	167.7	139	140.0	148
Sept.	188.0	181	125.1	281	131.8	132	206.5	165	188.8	150
Oct.	177.9	187	125.6	344	136.5	132	101.7	157	186.0	156
Nov.	161.8	143	182.3	303	140.9	132	206.0	139	181.2	136
Dec.	165.0	148	185.9	286	119.8	128	188.3	142	174.8	134
1951										
Jan.	202.4	134	181.8	272	122.7	124	195.6	148	191.1	125
Feb.	229.4	158	149.5	289	123.4	125	201.9	165	200.8	139
Mar.	268.9	172	180.5	293	126.2	125	206.6	176	232.3	143
Apr.	243.7	150	180.5	221	125.1	115	240.1	166	218.0	130
May	252.9	137	144.4	189	120.2	105	196.3	140	217.2	117
June	213.0	143	129.8	129	118.6	98	167.9	146	190.3	116
July	176.2	108	94.2	70	140.1	95	110.8	88	162.7	92
Aug.	135.1	117	124.9	72	107.6	97	80.4	80	134.4	98
Sept.	168.6	112	135.1	124	120.1	100	83.5	106	160.1	104
Oct.	181.9	111	125.6	168	117.7	103	101.7	99	173.3	106
Nov.	113.3	102	134.6	167	112.9	107	88.7	92	140.2	101
Dec.	132.3	83	145.7	151	103.1	110	72.7	113	135.6	94

Table 7 - Continued

Monthly Indexes of Output of Consumers' Durable Goods, Canada and United States, Jan. 1950 to March 1954
 Canadian figures based on 1947 Average-100 (without seasonal adjustment)
 United States figures based on 1947-49 Average-100 (without seasonal adjustment)

	Motor Vehicles		Radios & Radio Parts		Furniture		Refrig's, Vacuum Cleaners and Appliances		Total Consumers' Durables	
	Canada	U.S.	Canada	U.S.	Canada	U.S.	Canada	U.S.	Canada	U.S.
1952										
Jan.	188.7	77	101.8	160	109.0	108	85.6	104	162.6	92
Feb.	191.4	98	143.7	171	112.7	109	112.7	111	173.2	101
Mar.	203.7	112	147.3	173	121.6	108	116.7	124	183.0	107
Apr.	264.1	117	156.4	142	110.9	106	132.2	101	210.5	104
May	244.8	111	173.5	134	113.7	105	162.3	93	209.0	101
June	240.5	117	200.1	128	124.0	106	190.4	98	214.0	102
July	199.5	43	149.0	85	109.4	106	197.2	69	182.2	71
Aug.	144.2	71	179.3	157	127.2	114	167.6	87	151.2	93
Sept.	230.0	125	240.6	232	144.9	119	155.6	108	213.5	118
Oct.	219.5	130	306.3	277	154.2	124	163.9	110	223.4	127
Nov.	176.4	126	270.3	300	142.2	125	159.0	127	188.0	126
Dec.	182.1	114	272.8	244	131.4	128	132.0	138	188.4	118
1953										
Jan.	200.0	132	277.5	288	120.2	123	177.9	148	194.7	126
Feb.	237.3	151	302.0	293	128.4	126	205.6	173	219.4	136
Mar.	311.3	161	339.7	266	128.5	127	217.5	199	267.2	141
Apr.	306.1	170	340.9	236	131.1	123	238.1	182	266.1	139
May	292.4	162	304.7	208	127.9	119	253.5	168	258.6	133
June	287.6	166	312.3	179	128.3	117	263.0	149	259.4	131
July	270.3	161	183.6	136	115.2	112	231.1	112	230.5	120
Aug.	144.3	153	296.6	242	130.8	116	138.1	89	160.7	127
Sept.	195.3	134	415.5	249	145.2	114	180.7	95	214.6	122
Oct.	195.1	151	439.6	276	141.6	116	160.8	100	213.9	131
Nov.	130.5	107	461.9	230	133.6	113	165.9	86	169.7	110
Dec.	196.1	107	498.4	156	109.9	109	177.9	111	205.9	103

Table 7 - Continued

Monthly Indexes of Output of Consumers' Durable Goods, Canada and United States, Jan. 1950 to March 1954
 Canadian figures based on 1947 Average-100 (without seasonal adjustment)
 United States figures based on 1947-49 Average-100 (without seasonal adjustment)

	Motor Vehicles		Radios & Radio Parts		Furniture		Refrig's, Vacuum Cleaners and Appliances		Total Consumers' Durables	
	Canada	U.S.	Canada	U.S.	Canada	U.S.	Canada	U.S.	Canada	U.S.
1954										
Jan.	236.4	134	287.3	148	110.2	102	140.6	114	201.0	112
Feb.	259.9	135	294.6	142	114.4	103	173.7	131	218.0	113
Mar.	281.5	134	409.7	151	125.2	104	286.2	118	247.7	111
Apr.	265.7		358.5		122.0		224.1		229.1	

--Dominion Bureau of Statistics
 --Federal Reserve Board

Table 8

SUMMARY OF APPROPRIANCE SALES IN CANADA

Showing Units Sold and Market Saturation

	1949	1950	1951	1952	1953
	Sales	Sales	Sales	Sales	Sales
	% age Saturation	% age Saturation	% age Saturation	% age Saturation	% age Saturation
Refrigerators	167,071	353,188	384,633	445,189	451,566
Ranges	124,229	151,615	118,335	149,403	176,455
Washers	290,538	280,521	218,620	250,760	276,461
Ironers	18,000	18,900	10,639	12,265	11,115
Vacuum Cleaners (all types)	188,995	224,300	193,405	198,796	219,106
Radio Receivers (all types)	749,222	758,600	471,662	568,834	620,860
Radio Receivers (motor car only)	136,928	128,900	122,803	104,035	182,561
Television Receivers ..	--	29,600	39,185	137,236	366,496
Water Heaters (all types)	175,307	230,800	269,004	234,044	278,779
Hot Plates and Grills ..	192,182	241,500	208,887	223,415	239,193
Fans (portable)	82,180*	175,797*	95,790	45,640	112,841
Percolators (not incl. glass coffee makers) ..	9,860	41,800	21,176	17,121	33,182
Toasters (incl. sandwich toasters)	329,715	355,000	247,440	196,743	305,141
Waffle Irons	23,310	58,621	30,626	27,025	36,062
Irons	447,928	539,300	478,040	427,161	481,494
Heating Pads	107,195	135,100	99,481	117,741	144,500

* Fans (all kinds)

The following footnotes to this Table on Market Saturation appearing in Trade Builder, June, 1954, may be of interest in interpreting the statistics:

Saturation percentages are based on the number of electrical households estimated at 3,319,139.

Table 8 - Continued

SUMMARY OF APPLIANCE SALES IN CANADA

Showing Units Sold and Market Saturation

Radio figures are calculated on the number of Canadian families estimated at 3,483,700 or 4.3 persons per family. This is necessary in order that the battery model figures may be included. The market for radio now consists mostly of replacement sales and sales of second and third receivers in the same home; saturation percentage is shown as 100.0 but the market for additional radios is still very great.

Many homes have more than one iron which accounts for number in use exceeding number of households.

Motor car radio figures are calculated against 2,500,000 passenger car registrations.

Note: An allowance for obsolescence has been made from year to year in all calculations, thus factor being taken into consideration in carrying figures forward.

Imports of radio receivers, all types, are given by DBS as 24,364 having a value of \$1,253,634. Exports of same are shown as 23,329 having a value of \$94,208. Imports of TV receivers are shown as 16,973 having a value of \$2,253,643. No data is available for TV exports.

Market saturation on TV is continuously variable as new stations are regularly coming on the air, bringing reception to more and more geographical areas.

Table 9

RANGES OF OPERATING RESULTSUnincorporated Tobacco Stores

	<u>Owned (34 Stores)</u>			<u>Rented (143 Stores)</u>				
	Lower Quartile	Mid Quartile	Upper Quartile	Average	Lower Quartile	Mid Quartile	Upper Quartile	Average
Gross Profit	14.0	17.4	19.4	17.1	13.8	15.5	19.3	16.6
Total Operating Expenses	5.3	8.0	12.3	9.1	6.1	8.2	11.9	9.4
Net Operating Profit	4.1	8.8	11.3	8.0	4.8	7.2	9.3	7.2

Unincorporated Appliance and Radio Stores

	<u>Owned (34 Stores)</u>			<u>Rented (44 Stores)</u>				
	Lower Quartile	Mid Quartile	Upper Quartile	Average	Lower Quartile	Mid Quartile	Upper Quartile	Average
Gross Profit	22.1	25.1	32.0	26.8	22.8	25.2	30.5	26.8
Total Operating Expenses	13.3	16.9	21.2	17.8	14.3	17.3	29.8	17.5
Net Operating Profit	4.8	8.1	11.8	9.0	5.3	8.1	11.8	9.3

Table 10

ESTIMATED RETAIL TRADE BY KINDS OF BUSINESSSource: Retail Trade, Dominion Bureau of Statistics

(in Millions of dollars)

	<u>1951</u>	<u>1952</u>	<u>1953</u>	<u>Jan. to June 1954 over Jan. to June, 1953</u>
1. Total, All Trades	10,660.5	11,575.5	12,092.2	- 1.5%
2. Grocery & Combination Stores	1,900.2	2,039.5	2,126.5	+ 5.0%
3. Meat Stores	176.4	164.4	167.6	+ 3.3%
4. General Stores	519.4	546.3	532.6	- 0.6%
5. Department Stores	914.8	996.0	1,028.6	+ 2.7%
6. Variety Stores	195.6	213.7	224.3	+ 2.2%
7. Motor Vehicle Dealers	1,839.1	2,119.2	2,274.6	- 8.7%
8. Garages & Filling Stations	473.9	503.7	542.4	+ 2.4%
9. Men's Clothing Stores	201.7	209.4	203.6	- 6.4%
10. Family Clothing Stores	193.0	203.2	203.3	- 4.1%
11. Women's Clothing Stores	192.8	203.8	209.5	- 3.3%
12. Shoe Stores	111.5	116.4	118.3	- 4.5%
13. Hardware Stores	226.6	235.0	248.8	- 3.1%
14. Lumber & Building Materials Dealers	357.6	380.1	422.8	- 7.1%
15. Furniture Stores	146.3	177.7	183.9	- 5.6%
16. Appliance & Radio Stores	210.2	254.2	278.1	N/A *
17. Restaurants	433.1	457.1	446.6	- 2.5%
18. Coal & Wood Dealers	230.8	234.5	219.9	+ 8.4%
19. Drug Stores	248.3	267.1	275.2	+ 0.3%
20. Jewellery Stores	104.6	116.0	119.4	- 0.9%
21. Tobacco Stores	78.3	89.3	94.4	- 1.0%
22. All Other Trades	1,856.3	2,049.0	2,169.7	- 0.8%

*For the period January to April, 1954 over January to April, 1953, retail sales of "Appliance & Radio Stores" showed a reduction of 3.9% in sales for Canada as a whole. It is interesting to note that Ontario showed a reduction of only 1.0% and British Columbia an increase of 10.6%. For the period January to March, 1954 over January to March, 1953, for the same stores, there was a reduction of 1.4% for Canada, whilst Ontario showed an increase of 1.9% and British Columbia an increase of 21.3%.

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